

ATTACHMENT 69

<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT 2 EASTERN DISTRICT OF PENNSYLVANIA 3 -----) 4 IN RE: PROCESSED EGG PRODUCTS) 5 ANTITRUST LITIGATION) 6 -----) MDL NO. 2002 7 THIS DOCUMENT RELATES TO) 08-md-02002 8 Kroger, Inc. v. United Egg) 9 Producers, et al.,) HIGHLY 10 No. 2:10-cv-06705GP) CONFIDENTIAL 11 ***** 12 13 The videotaped deposition upon oral 14 examination of GARY A. STULL, a witness produced 15 and sworn before me, Tara Gandel Hudson, RPR, CRR, 16 a Notary Public in and for the County of Marion, 17 State of Indiana, taken on behalf of the defendants 18 at the offices of FAEGRE BAKER DANIELS, 300 N. 19 Meridian Street, Suite 2700, Indianapolis, Marion 20 County, Indiana, on the 1st day of April, 2014, 21 commencing at the hour of 9:32 a.m., pursuant to 22 the Federal Rules of Civil Procedure. 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: 2 3 On behalf of Defendant Midwest Poultry Services: 4 KATHY LYNN OSBORN, ESQ. 5 Faegre Baker Daniels 6 300 N. Meridian Street 7 Suite 2700 8 Indianapolis, IN 46204 9 312/237-8261 10 kathy.osborn@faegreBD.com 11 12 On behalf of the Defendant Rose Acre Farms: 13 MOLLY S. CRABTREE, ESQ. 14 Porter Wright 15 41 South High Street 16 Suites 2800-3200 17 Columbus, OH 43215 18 614/227-2015 19 mcrabtree@porterwright.com 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 On behalf of the indirect purchaser Plaintiffs: 4 PAUL NOVAK, ESQ. 5 (Appearing telephonically) 6 Milberg, LLP 7 One Kennedy Square 8 777 Woodward Avenue, Suite 890 9 Detroit, MI 48226 10 313/309-1760, 212/594-5300 11 pnovak@milberg.com 12 13 On behalf of the Kroger Plaintiffs and the 14 witness: 15 KEVIN J. MURRAY, ESQ. 16 Kenny Nachwalter 17 1100 Miami Center 18 201 South Biscayne Boulevard 19 Miami, FL 33131 20 305/737-1000 21 kmurray@kennynachwalter.com 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES: 2 3 On behalf of the Defendant R.W. Sauder: 4 CHRISTINE C. LEVIN ESQ. 5 Dechert LLP 6 Cira Centre 7 2929 Arch Street 8 Philadelphia, PA 19104 9 215/994-4000 10 christine.levin@dechert.com 11 12 ALSO PRESENT: 13 Sara Williams, Videographer 14 15 16 17 18 19 20 21 22 23 24 25</p>

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<p style="text-align: right;">Page 6</p> <p>1 Exhibit 7 Rose Acre Farms Agreement,89</p> <p>2 KRGE00019436-443</p> <p>3 Exhibit 8 Rose Acre Farms Certification,100</p> <p>4 KRGE00020141</p> <p>5 Exhibit 9 Rose Acre Farms Certification,100</p> <p>6 KRGE00019397</p> <p>7 Exhibit 10 Cal-Maine Foods Agreement,102</p> <p>8 KRGE00018833-836</p> <p>9 Exhibit 11 NuCal Foods, Inc. Agreement,113</p> <p>10 KRGE00019290-19291</p> <p>11 Exhibit 12 Midwest Poultry Services, L.P.113</p> <p>12 Agreement, KRGE00019063-070</p> <p>13 Exhibit 13 8-1-03 Email Chain, Subject113</p> <p>14 Ralph's Eggs, KRGE00010798-799</p> <p>15 Exhibit 14 9-27-02 Letter, Krouse to113</p> <p>16 Stull, MPS-0093359-360</p> <p>17 Exhibit 15 4-4-03 Letter, Krouse to Stull, ...113</p> <p>18 MPS-000092027-034</p> <p>19 Exhibit 16 2-2-04 Letter, Krouse to Stull, ...113</p> <p>20 MPS-00093368-369</p> <p>21 Exhibit 17 1-9-04 Memorandum, Willardson156</p> <p>22 to Sumner, MOARK-IPP-0004913-915</p> <p>23 Exhibit 18 1-26-04 Memorandum, Hodges to158</p> <p>24 Stull, MOARK0001462-463</p> <p>25 Exhibit 19 8-25-03 Letter, Lillywhite to192</p>	<p style="text-align: right;">Page 8</p> <p>1 THE VIDEOGRAPHER: This is the video</p> <p>2 deposition of Gary Stull taken in the matter of</p> <p>3 "In Re: Processed Egg Products Antitrust</p> <p>4 Litigation," in the United States District Court</p> <p>5 for the Eastern District of Pennsylvania.</p> <p>6 MDL No. 2002 08-MD-02002.</p> <p>7 Today's date is Tuesday, April 1st,</p> <p>8 2014. This deposition is being held at the law</p> <p>9 offices of Faegre Baker Daniels, 300 North</p> <p>10 Meridian Street, Suite 2700, Indianapolis,</p> <p>11 Indiana. My name is Sara Williams, and I am the</p> <p>12 video specialist. The court reporter is Tara</p> <p>13 Hudson. We represent Henderson Legal Services.</p> <p>14 The time is 9:32 a.m., and we are on</p> <p>15 the record. Could counsel please state their</p> <p>16 names and the parties they represent.</p> <p>17 MS. LEVIN: Christine Levin for RW</p> <p>18 Sauder.</p> <p>19 MS. CRABTREE: Molly Crabtree for Rose</p> <p>20 Acre Farms.</p> <p>21 MS. OSBORN: Kathy Osborn for Midwest</p> <p>22 Poultry Services.</p> <p>23 MR. MURRAY: Kevin Murray from Kenny</p> <p>24 Nachwalter on behalf of the Kroger Company and</p> <p>25 the witness Mr. Stull.</p>

<p style="text-align: right;">Page 9</p> <p>1 THE VIDEOGRAPHER: The court reporter 2 may swear in the witness. 3 GARY A. STULL, 4 having been first duly sworn to tell the truth, the 5 whole truth and nothing but the truth relating to 6 said matter, was examined and testified as follows: 7 DIRECT EXAMINATION, 8 QUESTIONS BY CHRISTINE C. LEVIN: 9 Q Could you state your name for the 10 record, please. 11 A Gary Stull. 12 Q Mr. Stull, thank you for coming here 13 today. I don't know if you are familiar with the 14 litigation, but I'd just like to know, have you 15 ever been deposed before? 16 A Yes. 17 Q How many times? 18 A Once. 19 Q When was that? 20 A You know, I can't recall that. I 21 honestly don't remember. 22 Q Okay. But while you were employed by 23 Kroger? 24 A Yes. 25 Q Was the deposition in conjunction with</p>	<p style="text-align: right;">Page 11</p> <p>1 need a "yes" or "no" if it's a "yes" or "no" type 2 question. 3 We generally go for about an hour or an 4 hour and a half at a time because that's how long 5 the videographer's tape lasts. But if you need a 6 break at any point or you need to get up and 7 stretch your legs or whatever, feel free to ask 8 for that. Okay? This is not a contest to see if 9 you can make it for the full hour and a half. 10 And if you don't understand a question 11 that I have asked, you are welcome to ask me to 12 repeat the question or to rephrase the question 13 so that you can understand and answer it. 14 Is there any reason you can't testify 15 truthfully today? You're not taking any 16 medications or anything of that sort? 17 A I take medications but I don't think I 18 take anything that would affect -- 19 Q Okay. 20 A -- testifying. 21 Q Good enough. 22 A In my past life I was involved in 23 some -- I was injured, and one of the things that 24 happened, I was in an explosion. And I don't 25 know if I have TBI or not, but it's quite a</p>
<p style="text-align: right;">Page 10</p> <p>1 your Kroger employment? 2 A Yes. 3 Q What do you recall the subject matter 4 of the litigation? 5 A Honestly, I don't. Honestly, I don't. 6 I've been retired for eight years -- 7 Q Okay. 8 A -- and I stopped thinking about work 9 eight years ago. I have three wonderful 10 grandchildren that take my time. They live 11 quarter mile away, and I spend all my days with 12 them. 13 Q Okay. Well, that's very nice. 14 I will just review some of the rules of 15 the road -- 16 A Okay. 17 Q -- since it's been a while since you've 18 been deposed. First of all, we can't talk at the 19 same time, so I would ask that you wait for me to 20 finish my question before you start your answer 21 so that our court reporter can get down 22 everything that's being said. 23 The second is that you need to reply 24 verbally. Hand gestures or nods of the head will 25 not be recorded by the court reporter. So we</p>	<p style="text-align: right;">Page 12</p> <p>1 possibility. I'm a disabled veteran and I 2 receive pension for several issues. 3 Q Okay. What is TBI? 4 A TBI? Traumatic brain injury. 5 Q Okay. Are you represented by counsel 6 today? 7 A Yes. 8 Q And when did you retain counsel? 9 A Couple weeks ago. 10 Q Have you ever been employed by Kroger? 11 A Yes. 12 Q Can you tell me the years when you were 13 employed by Kroger? 14 A I -- when I retired, I had been with 15 Kroger for 32 years. 16 Q And when did you retire? 17 A February 2006. 18 Q So if my math serves me correctly, you 19 were employed by Kroger beginning in around 1974? 20 Does that sound right? 21 A Something like that. 22 Q Okay. Can you go through as nearly as 23 possible your positions with Kroger beginning in 24 1974. 25 A Certainly. I began as a night shift</p>

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1 foreman in an egg plant. I worked my way up to
 2 general foreman. The plant, it was in Coldwater,
 3 Michigan. That plant closed. I went to another
 4 egg plant in Wabash, Indiana. I was there until
 5 that plant closed. Then I went to -- let's see.
 6 I went to Crawfordsville with the
 7 cheese plant and worked as a cheese sales manager
 8 for a period of time. And then I came back to
 9 eggs and went to Farina, Illinois, and worked at
 10 a -- Kroger had a breaker plant there in Farina,
 11 which we sold while I was there. I was there
 12 three months and had to move again.
 13 And moved to Crawfordsville, back with
 14 the cheese plant. And then I went into working
 15 as the -- was asked to come back to eggs as a
 16 sales manager for eggs. And I was there until my
 17 retirement. But please don't ask me years
 18 because I can't recall that.
 19 Q Well, I'm not going to ask you the
 20 years for each of them, but do you recall roughly
 21 when you became the sales manager for eggs? Or
 22 roughly how long you were the sales manager for
 23 eggs?
 24 A Honestly, I don't know. I mean I would
 25 just -- I didn't really separate that out, so I

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1 can't recall that.
 2 Q Okay. Were you ever -- did you ever
 3 have the title of general manager of egg
 4 procurement?
 5 A Yes, I think so.
 6 Q And do you know what time period that
 7 was?
 8 A No, I do not.
 9 Q Which of these positions that you've
 10 described here for me included the general
 11 manager of egg procurement title?
 12 A The last one.
 13 Q The sales manager for eggs?
 14 A Mm-hmm.
 15 Q So can you tell me about your
 16 responsibilities as sales manager for eggs?
 17 A That was really the procurement -- the
 18 title was as manager because that's what Kroger
 19 had in place, but I was procurement manager in
 20 reality.
 21 Q Okay. And what were those
 22 responsibilities?
 23 A Procure eggs for the Kroger Company.
 24 And maintain the quality.
 25 Q Right. And, let's step back for just a

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1 minute and talk a little bit about the Kroger
 2 corporate structure. And I'm not going to get
 3 into great detail with you, but I'd just like to
 4 get a little bit of a basis here.
 5 I understand Kroger embraces a number
 6 of different banners or names for their different
 7 grocery chains; is that correct?
 8 A Yes.
 9 Q Do you recall the names of some of
 10 those banners is what I've always referred to
 11 them as?
 12 A Kroger.
 13 Q Right.
 14 A Ralph's.
 15 Q Mm-hmm.
 16 A I'm trying to think, it's been so long
 17 since I've remembered them. I'm sure you
 18 probably have them somewhere. I can't really
 19 remember the rest of them.
 20 Q Do you recall King Soopers?
 21 A Oh, yes. King Soopers. I'm sorry.
 22 Q And Smith's?
 23 A I don't recall Smith's.
 24 Q You don't recall that? Okay, but there
 25 were a number of different banners --

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1 A Yes.
 2 Q -- under which the Kroger chain
 3 operated; correct?
 4 A Yes.
 5 Q And were your egg procurement
 6 responsibilities for all of those chains?
 7 A Yes.
 8 Q And were the procurement
 9 responsibilities nationwide?
 10 A Yes.
 11 Q We'll come back to some of that, but I
 12 wanted to get just a little bit of a basis for
 13 exactly what it was you did.
 14 Did your procurement include shell
 15 eggs?
 16 A Yes.
 17 Q As well as egg products?
 18 A I really -- egg products were a very
 19 small part. Most of the divisions took care of
 20 that themselves.
 21 Q So, when you say most of the divisions,
 22 you mean the different banner stores?
 23 A Correct.
 24 Q So you say that you left Kroger in
 25 February of 2006 for retirement? Is that

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1 correct?
 2 A Yes.
 3 Q Did you leave on good terms?
 4 A Yes.
 5 Q I mean this was just a retirement;
 6 correct?
 7 A Correct.
 8 Q Do you have any ongoing financial
 9 relationship with Kroger by way of a pension, for
 10 example?
 11 A Yes.
 12 Q I'd like to begin by discussing the
 13 animal welfare program for egg-laying hens, which
 14 is what this litigation is about. Do you
 15 understand that that's -- maybe I should just ask
 16 you. What do you understand the litigation is
 17 about?
 18 A I first learned of the litigation when
 19 I received the letter dated February 14th of this
 20 year. I have had no contact with Kroger Company
 21 over my retirement. I have the letter that you
 22 sent me in 2013 --
 23 Q Right.
 24 A -- but that didn't say anything about
 25 litigation. So I first became aware of any kind

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1 of litigation in February when I received that
 2 letter.
 3 Q In February of 2014?
 4 A Yes.
 5 Q But what do you understand the
 6 litigation to be about?
 7 MR. MURRAY: And let me say in
 8 answering that question, please do not reveal any
 9 information that you've learned from counsel. If
 10 you can answer the question independent of
 11 discussions you've had with your lawyers, go
 12 ahead and do so. If you can't, then point that
 13 out.
 14 A Okay. The only -- the only thing I can
 15 tell you is, when I got that letter, then I knew
 16 there was litigation. I had no idea what it was
 17 about. It just said Kroger versus United Egg
 18 Producers.
 19 Q When you say "that letter," you mean
 20 the letter that I sent you?
 21 A Yes. The second one.
 22 Q Well, do you recall animal welfare
 23 issues being a topic of discussion at Kroger in
 24 the early 2000s?
 25 A At Kroger?

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1 Q Yes.
 2 A No, not really.
 3 Q Do you recall -- or do you know an
 4 organization known as PETA?
 5 A Yes.
 6 Q Do you know what "PETA" stands for?
 7 A Yes.
 8 Q What does it stand for?
 9 A People for the Ethical Treatment of
 10 Animals.
 11 Q Do you recall in the earlier 2000s PETA
 12 pressuring various food organizations to adopt
 13 animal welfare guidelines?
 14 A Yes.
 15 Q What do you recall about that?
 16 A Can you be more specific than that,
 17 what --
 18 Q Well, I'd like to get your general
 19 recollection, if you have one.
 20 A I know that McDonald's was involved.
 21 Q Okay.
 22 A And that PETA was active in pursuing a
 23 lot of the fast food places.
 24 Q Okay. So you recall PETA pursuing
 25 McDonald's --

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1 A Yes.
 2 Q -- you said? Do you recall PETA
 3 pursuing Burger King, for instance?
 4 A Not specifically.
 5 Q But you recall that they were pursuing
 6 various fast food restaurants?
 7 A Correct.
 8 Q Do you recall PETA at some point in
 9 time turning its attention towards retail
 10 grocers?
 11 A You know, I really can't answer that
 12 because I really don't recall if they -- if they
 13 specifically targeted grocery stores or not.
 14 Q Okay. Well, we'll look at some
 15 documents that might refresh your recollection on
 16 that.
 17 Do you know what FMI is?
 18 A I don't know what it stands for. I
 19 don't know what FMI is.
 20 Q Do you know generally what the
 21 organization does?
 22 A No. I can't recall. I'm not -- I'm
 23 not trying to be evasive. I honestly can't
 24 recall.
 25 Q Okay. Do you recall that it's a trade

<p style="text-align: right;">Page 21</p> <p>1 association for food marketing organizations?</p> <p>2 A I really don't recall that.</p> <p>3 Q Do you recall whether Kroger belonged</p> <p>4 to FMI at the time -- I would like to focus this</p> <p>5 deposition, frankly, on 2000 until the time that</p> <p>6 you retired.</p> <p>7 A Okay.</p> <p>8 Q That's basically the time period I'm</p> <p>9 interested in.</p> <p>10 Do you recall that FMI -- I mean that</p> <p>11 Kroger belonged to FMI during that time period?</p> <p>12 A I wasn't intimate with that, so I can't</p> <p>13 say if they did or not. I --</p> <p>14 Q Okay. Let's mark a couple of documents</p> <p>15 as exhibits, 1 and 1-A. We'll see if this helps</p> <p>16 refresh your recollection a bit.</p> <p>17 (Deposition Exhibits 1 and 1-A were</p> <p>18 marked for identification.)</p> <p>19 MR. MURRAY: Why are we using 1-A</p> <p>20 instead of 2? Is that just because you have them</p> <p>21 marked that way?</p> <p>22 MS. LEVIN: Because they're the same</p> <p>23 document, and one is cut off and the other is</p> <p>24 not.</p> <p>25 So this I'd like to mark as Exhibit 1,</p>	<p style="text-align: right;">Page 23</p> <p>1 behalf of the indirect purchasers. I'd like the</p> <p>2 record to reflect that I'll be participating on</p> <p>3 behalf of the indirect purchasers today. I</p> <p>4 actually came in a few minutes prior to the last</p> <p>5 going off -- prior to going off the record.</p> <p>6 And in addition, I'd also like to</p> <p>7 reflect that the first notification that I</p> <p>8 believe indirect purchaser plaintiffs received of</p> <p>9 the date of this deposition was when the court</p> <p>10 reporting firm provided notification to us on</p> <p>11 last Friday. And for that reason, we both object</p> <p>12 to the timeliness, or lack of timeliness, in the</p> <p>13 notification that the deposition was going</p> <p>14 forward, and reserve our rights with respect to</p> <p>15 that.</p> <p>16 MR. MURRAY: This is counsel for</p> <p>17 Mr. Stull and Kroger. We had nothing to do with</p> <p>18 notifying the parties in the case about this</p> <p>19 deposition, and from our perspective this is the</p> <p>20 one and only time Mr. Stull is going to appear.</p> <p>21 MS. LEVIN: From my perspective, if</p> <p>22 you're correct that the first you learned about</p> <p>23 this was last week, then we apologize. I'm not</p> <p>24 in my office and so I really am not able to</p> <p>25 determine whether that's correct or not.</p>
<p style="text-align: right;">Page 22</p> <p>1 a document bearing the Bates No. MPS-00121367,</p> <p>2 and as Exhibit 1-A a press release that was</p> <p>3 obtained from the Kroger Company website.</p> <p>4 MR. MURRAY: The Kroger one's fine, and</p> <p>5 the other one is stamped confidential, highly</p> <p>6 confidential.</p> <p>7 MS. LEVIN: It is stamped highly</p> <p>8 confidential, and we can begin by having</p> <p>9 Mr. Stull sign an acknowledgment under the case</p> <p>10 management order and the protective order, if</p> <p>11 you'd like to review that with him.</p> <p>12 MR. MURRAY: Okay. Why don't we go off</p> <p>13 the record and I'll go outside and talk to him</p> <p>14 about this.</p> <p>15 MS. LEVIN: Okay.</p> <p>16 THE VIDEOGRAPHER: We're going off the</p> <p>17 record. The time is 9:48 a.m.</p> <p>18 (A recess was taken.)</p> <p>19 (Deposition Exhibit 2 was marked for</p> <p>20 identification.)</p> <p>21 THE VIDEOGRAPHER: We are back on the</p> <p>22 record. The time is 9:52 a.m.</p> <p>23 MS. LEVIN: Let the record reflect --</p> <p>24 go ahead.</p> <p>25 MR. NOVAK: This is Paul Novak on</p>	<p style="text-align: right;">Page 24</p> <p>1 Let the record reflect that while we</p> <p>2 were off the record, we marked as Exhibit Stull 2</p> <p>3 a copy of Mr. Stull's signed commitment to abide</p> <p>4 by the protective order with respect to</p> <p>5 confidential and highly confidential information</p> <p>6 that he may be seeing today.</p> <p>7 Q Mr. Stull, have you had a chance to</p> <p>8 review Exhibits 1 and 1-A?</p> <p>9 A I'm in the process of doing that right</p> <p>10 now.</p> <p>11 Q Okay. Let me know when you're</p> <p>12 finished.</p> <p>13 I will represent to you, and you're</p> <p>14 certainly welcome to satisfy yourself, but</p> <p>15 Defendant's Exhibit 1 is a press release by</p> <p>16 Kroger that has been cut off on the right-hand</p> <p>17 side, and so we printed out the same press</p> <p>18 release from the Kroger website so as to capture</p> <p>19 a few letters that seemed to be missing from</p> <p>20 Exhibit 1.</p> <p>21 A I've pretty much familiarized myself.</p> <p>22 Q Can you just state for the record what</p> <p>23 Defendant's Exhibit 1 and 1-A appear to be?</p> <p>24 A Exhibit 1 and 1-A appear to be a press</p> <p>25 release from the Kroger Company dated May 31st,</p>

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1 2002.

2 Q And what's the subject matter of
3 Defendant's Exhibit 1 and 1-A?

4 A It says Kroger to support animal
5 welfare guidelines developed by the Food
6 Marketing Institute.

7 Q And does Exhibit 1 refresh your
8 recollection that FMI stands for the Food
9 Marketing Institute?

10 A I can see that now, yes.

11 Q And at the top of Exhibit 1 you'll see
12 some notations that reflect that it appears you,
13 Gary Stull, sent Defendant's Exhibit 1 to Bob
14 Krouse. Do you see that?

15 A Yes.

16 Q Do you recall sending Defendant's
17 Exhibit 1 to Mr. Krouse?

18 A I don't specifically recall it, but it
19 has my name on it.

20 Q You don't question that you sent
21 Defendant's Exhibit 1 to Mr. Krouse on or about
22 June 26, 2002?

23 MR. MURRAY: Objection. Lack of
24 foundation. You can answer if you know.

25 A No.

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1 Q Mr. Stull, do you see in the upper
2 right-hand corner a fax number and then June 26,
3 2002?

4 On Defendant's Exhibit 1.

5 A I see -- where would I see that?

6 Q At the very top of the page on the
7 right-hand side.

8 A Okay. I see it, where it says June 26,
9 2002?

10 Q Correct. So do you have any doubt that
11 you in fact sent Defendant's Exhibit 1 to
12 Mr. Krouse on June 26, 2002?

13 A I don't recall sending it.

14 Q You don't recall, but do you question
15 whether you did in light of the notations on the
16 document?

17 A I would say, you know, that it's on
18 there.

19 Q Who is Mr. Krouse?

20 A Bob Krouse was with Midwest Poultry.

21 Q And was Midwest Poultry a supplier to
22 Kroger of shell eggs --

23 A Yeah --

24 Q -- in 2002?

25 A Yes. I'm sorry. I interrupted you.

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1 Q Do you know why you would have sent
2 Defendant's Exhibit 1 to Mr. Krouse in June of
3 2002?

4 MR. MURRAY: Objection. Calls for
5 speculation. You can answer if you know.

6 Q Mr. Krouse [sic], you understand, I
7 only want you to answer things if you know;
8 correct?

9 A Correct.

10 Q Good.

11 MS. LEVIN: We don't need to continue
12 to coach him in that fashion.

13 MR. MURRAY: I'm not coaching him. I'm
14 making an objection for the record.

15 Q Mr. Stull, can you answer the question?

16 MR. MURRAY: I'll make whatever
17 objections I feel are appropriate.

18 A I can't -- would you restate the
19 question, please?

20 MS. LEVIN: Can you read the question
21 back for Mr. Stull.

22 (The reporter read the requested
23 question.)

24 MR. MURRAY: Can you also read my
25 objection.

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1 I'll renew my objection.

2 MS. LEVIN: The question says "Do you
3 know?"

4 MR. MURRAY: My objection is calls for
5 speculation. You can answer if you know.

6 A No. I don't recall.

7 Q Let's take a look at the text of the
8 press release and see if it refreshes your
9 recollection on what was going on at Kroger with
10 respect to animal welfare in the early 2000s.

11 See at the first sentence it says, "The
12 Kroger Company today said it continues to support
13 the Food Marketing Institute's development of an
14 animal welfare program."

15 Do you recall that in May of 2002
16 Kroger was supporting the Food Marketing
17 Institute's development of an animal welfare
18 program?

19 A I have the document in front of me that
20 says that.

21 Q But do you recall whether that was
22 taking place at that time? Does this refresh
23 your recollection?

24 A I don't recall. It's been eight years.

25 It's hard to pin down what happened eight years

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1 ago.

2 Q I understand. It's actually been
3 twelve years, so --

4 A Twelve years ago.

5 Q We understand that you don't have a
6 crystal clear recollection. My question is
7 really whether you recall generally that that was
8 going on in your job at the time?

9 A Yes.

10 Q And do you recall that the company at
11 that point in time was going to require its
12 suppliers to adopt the best practice guidelines
13 when they were issued by FMI?

14 A I read that in this press release.

15 Q Do you recall whether the animal
16 welfare guidelines that were being considered at
17 this point in time included guidelines for
18 egg-laying hens?

19 A If -- I would be speculating at this
20 point to say anything. Because -- and the only
21 reason why I say that is I can't recall
22 specifically if it was or not. So a "yes" or
23 "no" answer, I can't give you that.

24 Q Do you recall generally whether the
25 animal welfare program that was being developed

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1 by the Food Marketing Institute included
2 guidelines for egg-laying hens?

3 MR. MURRAY: Objection. Asked and
4 answered. You can answer if you know.

5 A You would have to consult with Lynn
6 Marmer as to whether it was, because it's not
7 specifically laid out in here.

8 Q Okay. Well, we've got some other
9 documents we can look at that will perhaps help
10 prod your memory.

11 Do you recall -- going to the second
12 paragraph it states, "FMI began reviewing the
13 issue of animal welfare in 2001 at the request of
14 its member companies including Kroger,
15 Albertson's, Safeway, and others." Do you recall
16 Kroger encouraging FMI to look at the issue of
17 animal welfare in 2001?

18 A That would be speculation.

19 Q Do you have any reason to doubt the
20 accuracy of this press release by Kroger that's
21 contained in Defendant's Exhibit 1 and 1-A?

22 A No.

23 Q Do you recall that the guidelines that
24 were being explored by FMI were to be
25 science-based guidelines?

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1 A Is that stated in here?

2 Q Yes. It's right before the list of
3 names, the bullet point list of names.

4 A It states that in this press release.

5 Q Do you have any reason to doubt the
6 accuracy of that statement in the press release?

7 A This press release was by a Kroger
8 group vice president. That's a little above my
9 pay grade.

10 Q Well, I understand that. But I'm
11 asking whether you have any reason to doubt the
12 accuracy of the statements in this press release.

13 A I have confidence in what a Kroger vice
14 president would say.

15 Q Would you have sent the press release
16 to Mr. Krouse if you had questioned the accuracy
17 of the statements in the press release?

18 MR. MURRAY: Objection. Calls for
19 speculation.

20 A If Kroger -- if the Kroger corporate
21 vice president of corporate affairs said that's
22 where our position is, I wouldn't question that
23 position.

24 Q And you wouldn't have sent Defendant's
25 Exhibit 1 to Mr. Krouse if you believed it

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1 contained inaccurate statements; would you?

2 MR. MURRAY: Objection. Calls for
3 speculation.

4 A I'll go back to my other answer. If it
5 was put out by a Kroger group vice president,
6 then I have confidence in Kroger's system.

7 Q It states further down in the
8 next-to-last paragraph that "Kroger has supported
9 the FMI/NCCR Animal Welfare Program since its
10 inception and we will continue to support its
11 ongoing research." Do you see that sentence?

12 A Uh-huh. Yes.

13 Q Do you have any reason to question the
14 accuracy of that sentence?

15 A Once again, I have confidence in the
16 Kroger system. And if Lynn Marmer said that, I
17 have confidence that that's the position.

18 Q Do you have a recollection that Kroger
19 supported the animal welfare program since its
20 inception?

21 A I don't have a personal memory of it,
22 but it states that here. And once again, I have
23 absolute confidence that if Lynn Marmer of the
24 Kroger Company said we did, we did.

25 Q Does reviewing Exhibit 1 or 1-A bring

<p style="text-align: right;">Page 33</p> <p>1 back any other recollection to you concerning the 2 early involvement of Kroger with the animal 3 welfare program? 4 A No. 5 MS. LEVIN: Let's mark as Exhibit 3 a 6 document bearing Bates No. KRGE00019788 through 7 792. 8 (Deposition Exhibit 3 was marked for 9 identification.) 10 Q Mr. Stull, if you'll let me know when 11 you've had a chance to review Defendant's Exhibit 12 3, then we'll talk about it a little bit. 13 And to expedite your review, I will not 14 be asking any questions about the last page but 15 you're certainly free to review it. 16 A I've reviewed it. 17 Q You've had a chance to review 18 Defendant's Exhibit 3? 19 A Yes. 20 Q Or Stull Exhibit 3? 21 Mr. Stull, the first question I have is 22 whether looking at this -- well, let me first ask 23 you what Defendant's Exhibit 3 appears to be? 24 A It states that it's a letter initiated 25 by Lisa Beth Miller announcing that we would</p>	<p style="text-align: right;">Page 35</p> <p>1 reported to whoever held the position of 2 marketing manager, dairy products? 3 A Correct. 4 Q How many people reported to you? 5 A Reported to me? 6 Q Yes. 7 A At one time I had one person reporting 8 to me. 9 Q And otherwise you had no one reporting? 10 A Otherwise I had no one. 11 Q Who was the person, or at least what 12 was the position of the person that the person 13 who reported to you held? 14 A She was a field inspector that went out 15 to maintain quality by visiting suppliers 16 unannounced. 17 Q So she would make unannounced visits, 18 for example, to various egg providers? 19 A Correct. 20 Q And do you recall her name? 21 A I recall her maiden name. 22 Q I just would like a name to make the 23 record a little bit easier. 24 A Anita Graffiti. 25 Q Graffiti as in --</p>
<p style="text-align: right;">Page 34</p> <p>1 continue to support the Food Marketing 2 Institute's development of an animal welfare 3 program, and that the company would require its 4 suppliers to adopt the program's best practice 5 guidelines when they are issued. 6 Q And the date of Exhibit 3 is October 1, 7 2002? 8 A Yes. 9 Q Who is Lisa Beth Miller? Do you 10 recall? 11 A Lisa Beth Miller was my boss. 12 Q And what was her position? 13 A She was marketing manager, dairy 14 products. 15 Q And Lisa Beth Miller was your boss for 16 the entire time that you were the manager of egg 17 procurement? 18 A No. 19 Q Can you explain who was your -- who you 20 did report to when you were general manager of 21 egg procurement? 22 A Lisa Beth was one of the people that 23 occupied that position. There were others that I 24 reported to along the way, but I don't recall. 25 Q You don't recall, but you always</p>	<p style="text-align: right;">Page 36</p> <p>1 A (Nodding affirmatively) 2 Q -- markings on walls? 3 A Yes. 4 MR. MURRAY: Makes it memorable. 5 MS. LEVIN: It makes it easier to 6 remember, that's exactly right. 7 Q So -- 8 A Her father was a cement contractor. 9 Q That's interesting. So Ms. Graffiti 10 would make unannounced visits to egg suppliers or 11 egg producers for Kroger Company. And what sorts 12 of things was Ms. Graffiti looking for when she 13 made these unannounced visits? 14 A Kroger had certain quality standards 15 that we required all suppliers to meet. Anita's 16 function was to go out to the suppliers and make 17 sure that those standards were being maintained. 18 An example would be level -- levels of checks or 19 cracked eggs that would be allowed in a 100-egg 20 sample. Grade A eggs that would be allowed in 21 samples. We didn't allow Grade B. But she would 22 go out and maintain those Kroger-established 23 quality requirements. 24 Q And did Ms. Graffiti have anything to 25 do with monitoring whether animal welfare</p>

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1 guidelines were followed?
 2 A No.
 3 Q Okay. Let's go back to Exhibit 3. You
 4 notice that you were one of the cc:'s on Exhibit
 5 3?
 6 A Yes.
 7 Q Do you have any recollection of
 8 receiving Exhibit 3?
 9 A Not specifically. I received many
 10 things.
 11 Q I'm sure you did. And I ask the
 12 question only because I need to. I understand
 13 it's very difficult to remember a document twelve
 14 years ago.
 15 You've mentioned Lynn Marmer a number
 16 of times. Do you see Ms. Marmer received Exhibit
 17 3 as well? Her name's right next to yours.
 18 A Oh, yes.
 19 Q Who was Lynn Marmer?
 20 A I'm going to refer back to Exhibit 1
 21 because I don't know her exact title.
 22 She was the Kroger group vice president
 23 for corporate affairs.
 24 Q And do you know what Ms. Marmer's
 25 responsibilities were?

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1 A Once again, that's above my pay grade.
 2 I don't.
 3 Q Okay. Do you recall whether she was
 4 some sort of liaison to FMI?
 5 A I can't answer that. I don't know.
 6 Q Taking a look at the list of recipients
 7 of -- Exhibit 3. If you'll see about halfway
 8 down the list of the two lists -- no, on the
 9 first page.
 10 A Okay.
 11 Q There are a number of names followed by
 12 various division names. King Soopers, Fry's,
 13 Ralph's. Does that refresh your recollection at
 14 all as to some of the different banners that
 15 Kroger operates under?
 16 A When I look at that list, I would guess
 17 that that's primarily at that time the list of
 18 Kroger divisions.
 19 Q And would that be -- from Dillon on
 20 down, would those all be names of various banners
 21 under which Kroger operates stores?
 22 A Yes.
 23 Q So Dillon, King Soopers, Fry's,
 24 Ralph's, Food 4 Less, Smith's, and Fred Meyer
 25 were all banners under which Kroger operated in

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1 2002?
 2 A And also QFC.
 3 Q And QFC.
 4 Do you recall whether that list of
 5 banners changed between 2000 and 2006 when you
 6 retired?
 7 A No. I do not. I'm sorry.
 8 Q Let's take a look at the second page of
 9 Exhibit 3. And when you described what the topic
 10 or the subject matter of Exhibit 3 was, you read
 11 the first sentence here about the company
 12 announcing its continued support of FMI's
 13 development of an animal welfare program.
 14 Correct?
 15 A Correct.
 16 Q Does this refresh your recollection at
 17 all that FMI was developing an animal welfare
 18 program and that Kroger was in support of that
 19 development?
 20 A I read this first sentence and it tells
 21 me that.
 22 Q But you have no independent
 23 recollection?
 24 A No.
 25 Q Do you question the accuracy of the

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1 first sentence of the text of Exhibit 3?
 2 A No. I never questioned my boss.
 3 Q That's a good policy.
 4 Do you recall that the company was
 5 going to require its suppliers to adopt the
 6 guidelines once they were issued?
 7 A I read that in this press release;
 8 therefore, my memory's tainted already because
 9 I'm reading it here. Do I recall it
 10 independently? No.
 11 Q Further down in the third paragraph,
 12 the document references placing top priority on
 13 the comfort, health and safety of chickens. Does
 14 this refresh your recollection that the --
 15 amongst the animal welfare guidelines being
 16 developed, one was for egg-laying hens?
 17 A When I read this it talks about
 18 increased space -- cage space per hen. I would
 19 assume that's referring to egg-laying hens.
 20 Q And do you recall that one set of
 21 animal welfare guidelines that were being
 22 developed was for egg-laying hens?
 23 A Specifically, no. I don't.
 24 Q Do you recall there being an issue
 25 about cage space per hen which was being

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1 discussed by Kroger?

2 A I read that here. Therefore, I think
3 my recollection is tainted already. Do I --
4 would I have recollected it without this
5 document? No. Probably not.

6 Q Well, I'm not asking you -- and I am
7 concerned when you say it's tainted. I'm really
8 asking you whether reading this refreshes your
9 recollection at all. I understand that absent
10 looking at any documents you don't have a
11 recollection. My question to you is whether this
12 helps refresh your recollection.

13 A I know that there was some issues about
14 animal welfare things, but do I recall anything
15 specifically? No, I do not.

16 Q And does reviewing this document help
17 you recall that one of the issues was with
18 respect to cage space?

19 A I see it there, so I would say yes.

20 Q And do you recall that one of the
21 issues was about molting of hens?

22 A Once again, I see it here. I wouldn't
23 have recalled it specifically without seeing it
24 here.

25 Q Okay. But would you --

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1 A So this does -- this does tell me that
2 it was an issue, yes.

3 Q And it refreshes your recollection?

4 A It's hard to say if it's my
5 recollection or I'm reading it here. Do I see it
6 here? Yes. Do I remember if I recalled it? Not
7 specifically, no.

8 Q Let's talk a little bit -- I just want
9 to rewind just briefly about the time when you
10 were employed by Kroger working as a foreman or a
11 general foreman in egg plants. At that period of
12 time did Kroger have its own supply, or have its
13 own farms for egg-laying hens?

14 A No.

15 Q What was the relationship between the
16 egg plant that you worked at and Kroger? What
17 was the business that they were engaged in?

18 A The egg plant produced Kroger product.
19 Kroger eggs.

20 Q But when you say produced, what do you
21 mean?

22 A Packaged.

23 Q So --

24 A We brought eggs in and packaged them.

25 Q So the Kroger -- Kroger didn't own any

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1 farms at that point in time?

2 MR. MURRAY: Egg farms or other kind of
3 farms?

4 MS. LEVIN: Egg farms.

5 A Not at the facility I worked at.

6 Q Did they -- did Kroger own egg farms at
7 other facilities?

8 A Yes.

9 Q During that time period did you become
10 at all familiar with animal husbandry for hens?

11 A No.

12 Q On the next-to-last sentence, or the
13 next-to-last paragraph on the text of Lisa Beth
14 Miller's memo in Exhibit 3, there's a reference
15 to "working with Papetti's and Nulaid, our
16 Corporate Brand supplier of egg substitutes in
17 order to determine their ability to comply as
18 quickly as possible."

19 What are egg substitutes?

20 A When you take -- break eggs out and you
21 take the yoke out and you just have whites left,
22 and they'll put a little oil in with it to make
23 it whip together, that's an egg substitute.

24 Q So it would be something like what is
25 sold under the brand name Egg Beaters?

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1 A Correct.

2 Q And who are Papetti's and Nulaid?

3 A They were suppliers of egg substitutes.

4 Q And was this reference here to
5 Papetti's and Nulaid's ability to comply as
6 quickly as possible a reference to their ability
7 to comply with the animal welfare guidelines?

8 A I would assume that from the letter. I
9 did not deal with Papetti's or Nulaid.

10 Q Did you have any responsibility for egg
11 products or egg substitutes?

12 A No.

13 Q Your sole procurement responsibilities
14 were with respect to shell eggs?

15 A Correct.

16 MS. LEVIN: I'm going to mark as
17 Exhibit 4 a document bearing the Bates No.
18 DAY0029730.

19 (Deposition Exhibit 4 was marked for
20 identification.)

21 Q Mr. Stull, you'll let me know when
22 you've had a chance to review Exhibit 4.

23 You've completed your review of Exhibit
24 4, Mr. Stull?

25 A Yes, I have.

<p style="text-align: right;">Page 45</p> <p>1 Q What is Exhibit 4?</p> <p>2 A Exhibit 4 is a letter to Mr. Gene</p> <p>3 Gregory, senior vice president for UEP.</p> <p>4 Q It's dated August 2nd, 2005?</p> <p>5 A Correct.</p> <p>6 Q And is that your signature on Exhibit</p> <p>7 4?</p> <p>8 A Yes, it is.</p> <p>9 Q Do you recall rescinding -- sending</p> <p>10 Exhibit 4 to Mr. Gregory?</p> <p>11 A Specifically? No. I retired four</p> <p>12 months after this was --</p> <p>13 Q I understand. Do you have any doubt</p> <p>14 that you sent Exhibit 4 to Mr. Gregory?</p> <p>15 A No.</p> <p>16 Q And did you attempt in preparing</p> <p>17 Exhibit 4 to make truthful and accurate</p> <p>18 statements?</p> <p>19 A I'm not sure that I prepared this</p> <p>20 letter. The reason why I say that is some</p> <p>21 letters were sent to me and -- by suppliers</p> <p>22 encouraging me to sign them and send them on.</p> <p>23 Q And when you signed them and sent them</p> <p>24 on, did you review them for accuracy before</p> <p>25 signing and sending them?</p>	<p style="text-align: right;">Page 47</p> <p>1 accuracy of that sentence in Exhibit 4?</p> <p>2 A I don't know if I do or not because it</p> <p>3 happened quite a while ago.</p> <p>4 Q It's in fact consistent, is it not,</p> <p>5 with -- Mr. Stull, with Defendant's Exhibit 1,</p> <p>6 which is the press release which you've testified</p> <p>7 you have no reason to question?</p> <p>8 A Correct.</p> <p>9 Q So your statement that Kroger has</p> <p>10 supported the animal care certified program from</p> <p>11 the very beginning is consistent with Defendant's</p> <p>12 Exhibit 1; correct?</p> <p>13 A I don't know that it states it -- I</p> <p>14 don't --</p> <p>15 Q Well, look down at the next-to-last</p> <p>16 paragraph on the first page of Defendant's</p> <p>17 Exhibit 1. It states "Kroger has supported the</p> <p>18 FMI/NCCR Animal Welfare Program since its</p> <p>19 inception." So you don't have any doubt about</p> <p>20 the accuracy of this sentence in the matter --</p> <p>21 A Okay.</p> <p>22 Q -- in Defendant's Exhibit 4; do you?</p> <p>23 A It stated that in Exhibit 1, then I</p> <p>24 have no question to doubt -- no reason to doubt</p> <p>25 it because I don't doubt Kroger's position.</p>
<p style="text-align: right;">Page 46</p> <p>1 A On this particular letter, I honestly</p> <p>2 have to say I was preparing to leave the company,</p> <p>3 I had already turned in my retirement notice, and</p> <p>4 a lot of things came across my desk at that time.</p> <p>5 Do I recall specifically reviewing this? No, I</p> <p>6 don't.</p> <p>7 Q Do you have a recollection of someone</p> <p>8 sending you this Exhibit 4 for your signature?</p> <p>9 A No. Not specifically.</p> <p>10 Q So you don't -- aren't testifying today</p> <p>11 that somebody else prepared Exhibit 4 and sent it</p> <p>12 to you for signature?</p> <p>13 MR. MURRAY: Objection.</p> <p>14 Mischaracterizes his testimony.</p> <p>15 A You know, I can't recall if I -- as I</p> <p>16 said, many things came across my desk then.</p> <p>17 Q I understand. But you signed Exhibit 4</p> <p>18 and sent it to Mr. Gregory; correct?</p> <p>19 A Yes.</p> <p>20 Q And you stated in Exhibit 4 that Kroger</p> <p>21 has supported the animal certified -- animal care</p> <p>22 certified program from the very beginning.</p> <p>23 That's the first sentence in the fifth paragraph.</p> <p>24 A It stated that in the letter, yes.</p> <p>25 Q And do you have any doubt about the</p>	<p style="text-align: right;">Page 48</p> <p>1 Q When you stated in Exhibit 4 that</p> <p>2 Kroger has supported the animal care certified</p> <p>3 program from the very beginning, that was a</p> <p>4 correct statement? It was an accurate statement?</p> <p>5 A If we're referring to what was talked</p> <p>6 about in Exhibit 1, yes.</p> <p>7 Q The second sentence in that same</p> <p>8 paragraph, "We were instrumental in seeing that</p> <p>9 the Food Marketing Institute assembled a panel of</p> <p>10 leading national experts in animal welfare</p> <p>11 practices."</p> <p>12 Do you see that sentence?</p> <p>13 A Yes.</p> <p>14 Q Do you have any reason to question</p> <p>15 that -- the accuracy of that sentence in the</p> <p>16 letter that you sent to Mr. Gregory in Exhibit 4?</p> <p>17 A Once again, referring to Exhibit 1, it</p> <p>18 says -- it says that in Exhibit 1. So no, I</p> <p>19 don't have it -- I don't question Kroger's</p> <p>20 decision.</p> <p>21 Q Well, you don't question the accuracy</p> <p>22 of that sentence in Defendant's Exhibit 4; do</p> <p>23 you?</p> <p>24 MR. MURRAY: Objection. Asked and</p> <p>25 answered.</p>

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1 A Yeah, I have no reason to question what
2 Kroger said.

3 Q Well, do you have any reason to
4 question what you said in Exhibit 4 and signed
5 your name to?

6 A If it's the same thing that Kroger
7 said, no, I don't.

8 Q Well, does it appear to you to be the
9 same thing that Kroger said?

10 A Yes.

11 Q So you have no reason to question the
12 sentence in Defendant's Exhibit 4 that states,
13 "We were instrumental in seeing that the Food
14 Marketing Institute assemble a panel of leading
15 national experts in animal welfare practices"?

16 A Yes.

17 Q In the third paragraph in
18 Defendant's -- or in Exhibit 4 it states, "The
19 Animal Care Certified program allows customers to
20 know that science-based animal welfare standards
21 are being used." Do you have any reason to
22 question that sentence in Exhibit 4?

23 A No.

24 Q Right before that --

25 Why was it important for customers to

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1 know that the science-based animal welfare
2 standards were being used?

3 A It would be speculative of me to say
4 why Kroger felt that was important. I think you
5 have to refer back to Kroger's response in their
6 corporate news release. I don't -- I don't speak
7 for Kroger retail. My function was to procure
8 eggs, not to sell them.

9 Q Let's take a look at the rest of that
10 third paragraph. It says, "First, it is
11 important for Kroger to meet the needs of our
12 customers. Animal welfare is important to many
13 consumers." Do you have any reason to question
14 those words which you wrote to Mr. Gregory in
15 Exhibit 4?

16 A No.

17 Q In the next paragraph down you state,
18 "One benefit of the Animal Care Certified program
19 is that it provides a uniform set of requirements
20 for all participating egg producers, allowing for
21 the free flow of product." Do you see that
22 sentence?

23 A Yes.

24 Q Do you have any reason to question the
25 accuracy of that sentence in Exhibit 4?

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1 A Not when it was written, no.

2 Q Well, would there be some other time
3 when you might question the accuracy of that
4 sentence?

5 A No. But I can only refer to the time
6 when it was written.

7 Q I understand. But I'm just -- you
8 know, when you couch it in that way, it sounds
9 like perhaps you have reason to believe that at
10 some different point in time that sentence would
11 not have been correct.

12 A The only -- the only reason why I
13 answer like that is because it was eight years
14 ago. So I can't speak for anything that's
15 happened after that time.

16 Q I understand. But you don't have any
17 reason sitting here today to have a particular
18 reason to question the accuracy of that sentence?

19 A No.

20 Q Do you have a recollection or does this
21 refresh your recollection that at some point in
22 time prior to August of 2005 there was not a
23 uniform set of requirements and that that was
24 causing problems in the egg industry?

25 A I will refer back to Exhibit 3 where

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1 Lisa Beth talked about the guidelines placing top
2 priority on comfort, health, and safety of
3 chickens, and just basically say I supported my
4 supervisor's positions.

5 Q Are there any --

6 We've gone over some of the sentences
7 in Exhibit 4. Are there any sentences in Exhibit
8 4 that you question the accuracy of?

9 MR. MURRAY: Objection. Overly broad.
10 You can answer if you know.

11 A You know, I really -- I'm looking at it
12 after eight years. I don't know.

13 Q But you don't have any reason to
14 question --

15 A I don't have any recollection of it.

16 Q You don't have any reason to question
17 the accuracy of any of the other sentences in
18 Exhibit 4?

19 A No.

20 MS. LEVIN: Let's mark as Exhibit 5 a
21 document bearing the Bates No. MPS-00087588.
22 (Deposition Exhibit 5 was marked for
23 identification.)

24 Q And again, Mr. Stull, if you'll let me
25 know when you've had a chance to review Exhibit

<p style="text-align: right;">Page 53</p> <p>1 5, I would appreciate it.</p> <p>2 A I've read it.</p> <p>3 Q You've had a chance to review</p> <p>4 Defendant's -- I keep calling it Defendant's</p> <p>5 Exhibit -- Exhibit 5?</p> <p>6 A Yes.</p> <p>7 Q What is Exhibit 5?</p> <p>8 A It appears to be an animal welfare</p> <p>9 policy.</p> <p>10 Q And do you have any idea who would have</p> <p>11 prepared Exhibit 5?</p> <p>12 A No.</p> <p>13 Q Have you ever seen Exhibit 5 before?</p> <p>14 A Not that I recall.</p> <p>15 Q Let's take a look at the very first</p> <p>16 sentence where it states, "Kroger was one of the</p> <p>17 first major supermarket companies to adopt</p> <p>18 meaningful animal welfare guidelines." Do you</p> <p>19 see that?</p> <p>20 A Yes, I do.</p> <p>21 Q Do you have any reason to doubt the</p> <p>22 accuracy of that statement?</p> <p>23 MR. MURRAY: Objection. Lack of</p> <p>24 foundation. You can answer if you know.</p> <p>25 A I would say probably I would need to</p>	<p style="text-align: right;">Page 55</p> <p>1 standards. Do you see that sentence?</p> <p>2 A Yes.</p> <p>3 Q Was it correct that Kroger required all</p> <p>4 of its egg -- shell egg suppliers to adopt the</p> <p>5 animal welfare standards referenced in this</p> <p>6 document?</p> <p>7 A Yes.</p> <p>8 Q And the next sentence -- the next</p> <p>9 paragraph, I'm sorry, of Exhibit 5, the first</p> <p>10 sentence states, "We believe this joint industry</p> <p>11 effort with retailers and restaurants working</p> <p>12 together with leading animal welfare experts will</p> <p>13 make more progress in the humane treatment of</p> <p>14 animals than any company could achieve by acting</p> <p>15 alone."</p> <p>16 Do you see that sentence?</p> <p>17 A Yes, I do.</p> <p>18 Q Do you have any reason to doubt the</p> <p>19 accuracy of that sentence?</p> <p>20 MR. MURRAY: Objection. Calls for</p> <p>21 speculation.</p> <p>22 A I could -- I could speculate and say</p> <p>23 yes.</p> <p>24 Q Let's talk a little bit about shell egg</p> <p>25 procurement --</p>
<p style="text-align: right;">Page 54</p> <p>1 know where this came from. But if it was put out</p> <p>2 by a senior Kroger person, I wouldn't doubt it.</p> <p>3 Q Well, in the second paragraph it</p> <p>4 states, "In 2001, Kroger began working closely</p> <p>5 with the Food Marketing Institute and the</p> <p>6 National Council of Chain Restaurants to develop</p> <p>7 an industry-wide program that would introduce</p> <p>8 science-based guidelines to strengthen animal</p> <p>9 welfare practices across species." Do you see</p> <p>10 that?</p> <p>11 A Yes.</p> <p>12 Q Do you have any reason to question the</p> <p>13 accuracy of that sentence?</p> <p>14 A No.</p> <p>15 MR. MURRAY: Same objection.</p> <p>16 A No.</p> <p>17 Q In fact it's consistent with your</p> <p>18 letter that is contained in Exhibit 4; is it not?</p> <p>19 A Yes.</p> <p>20 Q It further states that "Kroger" -- and</p> <p>21 this is on -- in that same second paragraph of</p> <p>22 Exhibit 5, Kroger requires all of our suppliers</p> <p>23 to adopt these "best practices" animal welfare</p> <p>24 standards for Krogers, and monitors -- and Kroger</p> <p>25 monitors our suppliers for compliance with these</p>	<p style="text-align: right;">Page 56</p> <p>1 A Okay.</p> <p>2 Q To make sure I understand --</p> <p>3 MR. MURRAY: If we're switching gears,</p> <p>4 why don't we take a break. We've been going</p> <p>5 about an hour.</p> <p>6 MS. LEVIN: That's fine.</p> <p>7 THE WITNESS: That's a good idea.</p> <p>8 THE VIDEOGRAPHER: We're going off the</p> <p>9 record. The time is 10:44 a.m.</p> <p>10 (A recess was taken.)</p> <p>11 THE VIDEOGRAPHER: We're going back on</p> <p>12 the record. The time is -- this is the beginning</p> <p>13 of Tape 2. The time is 10:58 a.m., and we are</p> <p>14 back on the record.</p> <p>15 Q Mr. Stull, I'd like to turn now to your</p> <p>16 responsibilities for egg procurement, and how the</p> <p>17 procurement process worked, if you recall.</p> <p>18 A Okay.</p> <p>19 Q What do you recall just generally about</p> <p>20 procurement process for shell eggs?</p> <p>21 MR. MURRAY: Objection. Overly broad.</p> <p>22 You can answer.</p> <p>23 A Quality was number one.</p> <p>24 Q Quality was number one in terms of your</p> <p>25 selection of a supplier? Is that what you're</p>

<p style="text-align: right;">Page 57</p> <p>1 saying?</p> <p>2 A All suppliers had to match up to a</p> <p>3 quality standard, a Kroger quality standard.</p> <p>4 Q How did you go about obtaining</p> <p>5 suppliers?</p> <p>6 A There's a very limited pool of</p> <p>7 suppliers, so I contracted with them.</p> <p>8 Q How did you go about reaching the point</p> <p>9 where you were going to contract with a supplier?</p> <p>10 A I would solicit bids.</p> <p>11 Q Did you issue a request for proposals</p> <p>12 or request for bids?</p> <p>13 A Mm-hmm.</p> <p>14 Q Is that a "yes"?</p> <p>15 MR. MURRAY: Got to say "yes" or "no."</p> <p>16 A I'm sorry. Yes.</p> <p>17 Q Okay. Can you tell me how that process</p> <p>18 worked?</p> <p>19 A On an annual basis I would solicit</p> <p>20 quotes from suppliers.</p> <p>21 Q On an annual basis?</p> <p>22 A Uh-huh.</p> <p>23 Q And were the quotes for nationwide</p> <p>24 supply of eggs?</p> <p>25 A No single supplier could supply</p>	<p style="text-align: right;">Page 59</p> <p>1 A I don't recall exactly. I think the</p> <p>2 list that Lisa Beth had on her -- in that exhibit</p> <p>3 probably has all the divisions.</p> <p>4 Q In Exhibit 3?</p> <p>5 A Yes.</p> <p>6 Q So there was an Atlanta, Cincinnati,</p> <p>7 Central, Delta, Columbus, Mid-South, Michigan,</p> <p>8 Mid-Atlantic, and Southwest Division in terms of</p> <p>9 regions?</p> <p>10 A Correct.</p> <p>11 Q And then there were divisions under</p> <p>12 certain -- certain banners, Dillon, King Soopers,</p> <p>13 Fry, and so forth?</p> <p>14 A Yes.</p> <p>15 Q And so the bids that were being</p> <p>16 solicited for the divisions that are by cities or</p> <p>17 sections of the country were not for the supply</p> <p>18 of eggs to these particular banner divisions such</p> <p>19 as King Soopers, Fry's, and Ralph's. Is that</p> <p>20 correct?</p> <p>21 A Yes. Yes.</p> <p>22 Q So you would --</p> <p>23 A But there was always the possibility.</p> <p>24 I mean they could cross over.</p> <p>25 Q Okay. So when you solicited bids for</p>
<p style="text-align: right;">Page 58</p> <p>1 nationwide.</p> <p>2 Q So the requests were for regional</p> <p>3 quotes?</p> <p>4 A Yes.</p> <p>5 Q How many regions were there? Roughly?</p> <p>6 A If you look at the list of chains, and</p> <p>7 you look at where they're located, I think Kroger</p> <p>8 at that time had stores in 34 states. And so you</p> <p>9 had -- you had regions that were all over, from</p> <p>10 coast to coast.</p> <p>11 Q So when you issued a request for</p> <p>12 proposal, or request for bid -- RFP I usually</p> <p>13 call it -- it was for a particular region; is</p> <p>14 that correct?</p> <p>15 A Yes.</p> <p>16 Q And was that request, the RFP, to</p> <p>17 supply all of the stores that operated -- all the</p> <p>18 Kroger stores that operated in that region</p> <p>19 regardless of the banner?</p> <p>20 A No. Not necessarily.</p> <p>21 Q How did that work then?</p> <p>22 A I would have -- I would pick a supplier</p> <p>23 to handle a division. For example, Atlanta is a</p> <p>24 division. Or Indianapolis is a division.</p> <p>25 Q How many divisions were there?</p>	<p style="text-align: right;">Page 60</p> <p>1 the King Soopers division, was that for all King</p> <p>2 Soopers stores regardless of location?</p> <p>3 A Yes.</p> <p>4 Q Does King Soopers operate in any</p> <p>5 particular geographic region?</p> <p>6 A Yes.</p> <p>7 Q What region is that?</p> <p>8 A Colorado. Denver, primarily, I think</p> <p>9 is King Soopers.</p> <p>10 Q And does Fry's --</p> <p>11 A King Soopers has its own label. It's</p> <p>12 not a Kroger label. It's a King Sooper label.</p> <p>13 Q For eggs, for shell eggs? But you</p> <p>14 solicited bids for the supply of eggs to King</p> <p>15 Soopers separately from the supply of eggs to</p> <p>16 other stores?</p> <p>17 A Yes.</p> <p>18 Q And those eggs appeared in the King</p> <p>19 Soopers stores under the King Sooper label?</p> <p>20 A Yes.</p> <p>21 Q Did Kroger supply the packaging for</p> <p>22 those eggs?</p> <p>23 A Yes.</p> <p>24 Q Okay. And is the same true for Fry's</p> <p>25 division, that is you solicited separate</p>

<p style="text-align: right;">Page 61</p> <p>1 proposals for supply of eggs to the Fry's 2 division? 3 A I can't remember exactly if I did or 4 not. The only reason why I'm saying that, I -- 5 some of the -- some of the stores were in close 6 proximity to each other. 7 Q What do you mean, some of the stores? 8 A Well, some of the divisions. 9 Q Where does Fry's have stores? 10 A I can't tell you that. I don't know. 11 I don't remember that anymore. 12 Q Do you remember roughly what region of 13 the country Fry's operated in? 14 A No, I do not. 15 Q What about Ralph's? Do you recall what 16 region of the country Ralph's operated in? 17 A Yes, I do. 18 Q Where? 19 A California. Southern California. 20 Q And did you solicit eggs -- separate 21 RFPs for the supply of shell eggs to the Ralph's 22 Division? 23 A Yes. 24 Q Where does Food 4 Less operate? 25 A (No response)</p>	<p style="text-align: right;">Page 63</p> <p>1 it I did and some of it was done directly. 2 Q But you believe that Food 4 Less may 3 have done its own shell egg procurement during 4 the time you were employed by Kroger? 5 A I did some of it. I know I did. But 6 I -- some of it was done directly by the 7 division. 8 Q When you did the procurement for 9 Food 4 Less, was a separate RFP issued 10 specifically for the Food 4 Less division supply 11 contract? 12 A I'm trying to think back if they had 13 their own packaging or not, and I can't recall if 14 they did. If they had their own packaging, I 15 would have done a separate bid for them, but I 16 don't recall that. 17 Q If they didn't have their own 18 packaging, what would the packaging appear like 19 in the store? What kind of packaging would they 20 have? 21 A Would you restate that, what you mean? 22 Q Well, you've testified, for example, 23 that the King Soopers had its own packaging. 24 A Correct. 25 Q And so the eggs that were sold to King</p>
<p style="text-align: right;">Page 62</p> <p>1 Q Or where did Food 4 Less operate? 2 A They -- that just started when I was 3 going to the end of my Kroger career. I know 4 they're in Chicago area, but I can't really tell 5 you much about them because I didn't do much with 6 them. 7 Q This Exhibit 3 that has the term 8 Food 4 Less in it is dated October 2002. 9 A Right. 10 Q Which is four years before you left; 11 correct? Or three and a half years? 12 A Three years. Mm-hmm. 13 Q So you had three years of working with 14 Food 4 Less; correct? 15 A You know, I'm not -- I can't answer 16 that with any degree of certainty because I think 17 there were other suppliers in place at the time 18 that were not through the Kroger procurement. 19 Q Can you explain what you mean by that? 20 A Some of the divisions had their own 21 procurement. 22 Q So you didn't do the procurement for 23 certain of the divisions that appear in Exhibit 24 3? 25 A Yes. Some of the procurement. Some of</p>	<p style="text-align: right;">Page 64</p> <p>1 Soopers appeared in cartons that specifically 2 said King Soopers. 3 A Correct. 4 Q If Food 4 Less did not have its own 5 packaging, what sort of packaging did it use? 6 A Oh, I see what you mean. It would have 7 been a Kroger label. 8 Q And if you did the procurement for 9 Food 4 Less, would that have been under the 10 Kroger label? 11 A The part that I did for Food 4 Less 12 would be -- would have been under a Kroger label. 13 They had other labels that they solicited and got 14 themselves directly. 15 Q Do you know what labels those were? 16 A I can't recall. 17 Q Would the labels have been the labels 18 for the suppliers supplying the eggs? 19 MR. MURRAY: Objection. Calls for 20 speculation. 21 A Yeah, I -- 22 Q You just don't recall? 23 A I don't recall because it wasn't part 24 of my service. 25 Q So Food 4 Less would have sold eggs</p>

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1 under the Kroger label and under some other
 2 unspecified labels, perhaps?
 3 A Correct.
 4 Q What about the Smith's division, where
 5 did that operate?
 6 A (No response)
 7 Q Do you recall?
 8 A I can't recall.
 9 Q Do you recall generally the region of
 10 the country?
 11 A Honestly, no, I do not.
 12 Q Did you do separate RFP for procurement
 13 of shell eggs for the Smith's division?
 14 A I can't recall if I did or not.
 15 Q What about the Fred Meyer division, do
 16 you know where that operated?
 17 A Yes.
 18 Q Where did that operate?
 19 A The Northwest.
 20 Q And did you do separate RFPs for the
 21 procurement of shell eggs for the Fred Meyer
 22 division?
 23 A Yes.
 24 Q Now we've been talking about shell
 25 eggs. I just wanted to clarify my understanding.

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1 You did no procurement for egg products; is that
 2 correct?
 3 A Not -- not in later years. As I stated
 4 earlier, at one point I was the sale manager for
 5 a Kroger breaking plant before, so --
 6 Q When was that?
 7 A I don't recall. I can't remember the
 8 years. It was a very short time.
 9 Q Was it prior to 1999?
 10 A I can't recall.
 11 Q When you were the -- when you were
 12 working at the breaker plant, what exactly were
 13 your responsibilities?
 14 A I was the sales manager.
 15 Q So, again, you were responsible for the
 16 procurement of egg products; is that what you
 17 did?
 18 A No.
 19 Q What did you do?
 20 A I monitored the sales to Kroger.
 21 Q What do you mean, monitored the sales?
 22 A You know, I have to tell you, when I
 23 explained that I was only there for three months
 24 and then the plant closed, I was mostly learning
 25 the ropes. I really -- I really can't say what I

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1 did there because I wasn't there long enough to
 2 do much.
 3 Q But it had something to do with egg
 4 products?
 5 A It was a breaker plant that supplied
 6 egg products.
 7 Q Did it have anything to do with the
 8 procurement of egg products?
 9 A Not that I can recall.
 10 Q There are several other divisions
 11 listed on Exhibit 3 that are all geographic
 12 divisions. And rather than go through them one
 13 by one, I would ask whether you issued separate
 14 RFPs for the provision of shell eggs for each of
 15 those divisions?
 16 A Some of the divisions I used one
 17 supplier for. We had -- it depended on -- like
 18 Cincinnati and Central are very close together,
 19 so I would use one supplier. I would solicit
 20 both of those with one supplier.
 21 Q And when you solicited an R -- when you
 22 issued an RFP for the supply of shell eggs to the
 23 Cincinnati and Central divisions, was that for
 24 all Kroger stores regardless of the banner they
 25 were operating under?

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1 A No. Those would just be Kroger label.
 2 These are Kroger label divisions.
 3 Q So for all of these divisions that are
 4 described as geographic regions in Exhibit 3, it
 5 was for the supply of shell eggs under the Kroger
 6 label; correct?
 7 A That's correct.
 8 Q And only to stores operating under the
 9 Kroger banner? Is that correct?
 10 A That's correct.
 11 Q Are there stores in those regions that
 12 operate -- that are owned by Kroger and operate
 13 under a different banner?
 14 A I can't recall.
 15 Q So when you issued -- I assume you
 16 issued an RF -- you issued an RFP; correct?
 17 A Would you explain what an R --
 18 Q A request for proposal.
 19 A Okay. Yes.
 20 Q And what kind of information was
 21 contained in an RFP? Can you explain how that
 22 works?
 23 A I would offer -- for an example,
 24 Cincinnati division, I would say for all the
 25 sales, eggs, procurement, to go to that division,

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1 you know, it's up for grabs who wants it,
 2 basically, and put it out for bid.
 3 Q How did you go about disseminating the
 4 RFP?
 5 A Supply and demand.
 6 Q Well, I mean did you have particular
 7 suppliers that you sent it to? Or potential
 8 suppliers?
 9 A I would send it to supply -- any
 10 supplier was allowed to bid on anything.
 11 Q Well, I understand that. I'm trying to
 12 figure out how the supplier learned that the
 13 opportunity to bid was available?
 14 A Oh, okay. Well, the -- I would contact
 15 them and say, you know, bid's up in this
 16 particular division, soliciting bids for
 17 Cincinnati division, and then I would get bids
 18 in, competitive bidding, in from different
 19 suppliers.
 20 Q Did you have a list of potential
 21 suppliers that you selected to send the RFP to?
 22 A Yes.
 23 Q Did the RFP contain any information
 24 about Kroger's requirements for shell eggs?
 25 A Yes -- yes. Quality requirements.

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1 Q And do you recall what types of
 2 requirements were in the RFP?
 3 A Yes. Quality.
 4 Q And what do you mean by quality?
 5 A Kroger had standards on how many A
 6 Grade eggs are in per 100-egg sample or per
 7 carton and has a requirement of how many checks,
 8 or cracked eggs, can be in a carton. What the
 9 interior quality is, whether they're -- they have
 10 to be A Grade eggs.
 11 Q How do you measure interior quality of
 12 the egg?
 13 A Well, you take an egg and you put it in
 14 front of a candling light and you twirl it, and
 15 you watch where that -- watch that yolk go
 16 around, and it tells you -- it comes right up to
 17 the surface, it tells you that's not an A Grade
 18 egg. If it stays kind of down in there sort of,
 19 you're pretty sure it's an A Grade egg. You look
 20 at the air cell to determine if it's expanded or
 21 not. A small, tight air cell says they're A or
 22 double A quality. If the air cell is a little
 23 bigger, it can still be an A, and then it gets
 24 into a B, and then it gets into ones you don't
 25 want.

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1 Q So Kroger would sample, take a certain
 2 sampling of an egg shipment to satisfy itself
 3 that the shipment met the requirements for Grade
 4 A eggs?
 5 A Yes. But we also did supplier visits.
 6 Q Excuse me?
 7 A We did -- we would go to a supplier.
 8 Remember when we talked about Anita?
 9 Q That's what Ms. Graffiti --
 10 A Yes.
 11 Q -- did?
 12 A Correct.
 13 Q So you said that one of your criteria
 14 for selection was quality. Were there any other
 15 criteria for selection of a supplier?
 16 A Price.
 17 Q Anything else?
 18 A That was pretty much it.
 19 Q Was there any weight placed on
 20 reliability of the supplier?
 21 A Yes.
 22 Q What about customer service of the
 23 supplier?
 24 A As with any supplier of any product,
 25 you expect service and you expect customer

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1 service.
 2 Q Was there a requirement that the
 3 suppliers of shell eggs meet the UEP animal
 4 welfare guidelines?
 5 A I can't recall specifically if there
 6 was or not. I think at the time most suppliers
 7 were doing it.
 8 Q Okay. Well, we'll take a look at some
 9 of the documents to see if it refreshes your
 10 recollection.
 11 Do you recall -- I don't know if you
 12 know who the defendants are in the case. Are you
 13 aware of what egg producers are defendants in
 14 this litigation?
 15 A The only information I have is what you
 16 sent me on that.
 17 Q Okay. Do you recall what suppliers
 18 Kroger bought from while you were the egg
 19 procurement manager?
 20 A Most of them, I think.
 21 Q Can you tell me the ones you recall?
 22 A Midwest Poultry. Cal-Maine Foods.
 23 Rose Acres. And then Norco in California.
 24 Q Norco, that is part of Moark?
 25 A Yes. I don't think they were then

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1 but --
 2 Q That's okay. Do you recall buying from
 3 NuCal?
 4 A I'm trying think of who NuCal was. Did
 5 they -- were they up in the Northwest?
 6 Q Sadly I can't tell you.
 7 A Well, National Foods was one, I think.
 8 And that's about the stretch of my memory right
 9 now.
 10 Q Okay. Do you recall ever buying any
 11 shell eggs from Daybreak?
 12 A I probably did at one time or another.
 13 Q What about RW Sauder?
 14 A I don't think so.
 15 Q Ohio Fresh?
 16 A I can't recall that specifically.
 17 Q Any Hillandale? Any firm that has the
 18 name Hillandale in it?
 19 A Yes.
 20 Q You recall purchasing from Hillandale?
 21 A Yes.
 22 Q And what about Sparboe Farms?
 23 A No.
 24 Q So looking at this list, do you recall
 25 what divisions or banners you purchased eggs from

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1 Hillandale for?
 2 A From Hillandale?
 3 Q Yes. And if it helps to have
 4 Defendant's Exhibit -- or Exhibit 3 in front of
 5 you to refresh your memory as to what all the
 6 divisions were, feel free to look back.
 7 A I'm looking at it right now.
 8 You know, I can't remember specifically
 9 where Hillandale went. I would guess it would be
 10 somewhere close to their geographic area.
 11 Q Is it generally the case that egg
 12 suppliers serve customers that are in some sort
 13 of geographic proximity to their farms?
 14 A Pretty much.
 15 MR. MURRAY: Objection. Vague. You
 16 can answer.
 17 THE WITNESS: Okay.
 18 A Pretty much.
 19 Q Do you know roughly what that
 20 geographic reach might be?
 21 A By supplier?
 22 Q No, just if there's a rule of thumb.
 23 No more than 500 miles? A thousand miles?
 24 A No. No. I mean reliable suppliers
 25 could have business that would be a long stretch

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1 from them.
 2 Q That are a long stretch from their
 3 farms --
 4 A Yes.
 5 Q -- the farms where the hens --
 6 A Mm-hmm.
 7 Q You need to say "yes."
 8 A I'm sorry. Yes. I forgot. Excuse me.
 9 Q Right. And would that add an extra
 10 component of transportation cost?
 11 A Yes.
 12 Q So what about Midwest? Do you recall
 13 what region or divisions Midwest supplied eggs to
 14 while you were the manager of egg procurement?
 15 A Yes.
 16 Q What were those?
 17 A Cincinnati, Central, Columbus. I'm not
 18 sure if Mid-South was one or not. Midwest was
 19 the most reliable supplier that I had.
 20 Q What do you mean they were the most
 21 reliable supplier?
 22 A They met the requirements. Consistent
 23 quality, service.
 24 Q Price?
 25 A Price.

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1 Q Anything else that made them the most
 2 reliable supplier?
 3 A They would fill in in any division
 4 where I needed extra help.
 5 Q What do you mean by that?
 6 A I was not in charge of retail, and so I
 7 did not set any retail prices or have any input
 8 in retail pricing. Sometimes the division would
 9 have a feature going, and the normal supplier
 10 couldn't handle the volume. Then I would have to
 11 find other supplier sources to fill that volume.
 12 Q So when you say a division had a -- did
 13 you say a feature going?
 14 A Uh-huh.
 15 Q So if they had what might be described
 16 as a promotional price, for example --
 17 A Right.
 18 Q -- to try to push volume, as a result
 19 you might need extra eggs for that division --
 20 A Yes.
 21 Q -- beyond what your incumbent supplier
 22 could supply.
 23 A Yes.
 24 Q Is that correct? So you would turn to
 25 Midwest for that additional supply?

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1 A Yes, among others.
 2 Q Right. But this came up because you
 3 mentioned Midwest in this context.
 4 A Yes.
 5 Q When Midwest filled in that additional
 6 supply, was the pricing done in accordance with
 7 the existing Midwest contract?
 8 A Yes.
 9 Q Okay. Let's go back to Cal-Maine. Do
 10 you recall what regions Cal-Maine provided eggs
 11 for?
 12 A In looking at the list of divisions, I
 13 would say Mid-South, because that's
 14 geographically closer to their operation.
 15 Q So Cal-Maine provided -- if you're
 16 correct that it was Mid-South -- provided the
 17 requirements for -- Kroger's requirements for
 18 shell eggs to the Kroger stores in the Mid-South?
 19 A Yes.
 20 Q But not for any other stores, just the
 21 Kroger banner stores?
 22 A As far as I can recall, yes.
 23 Q What about Rose Acre?
 24 A Rose Acres would supply a division.
 25 Q Excuse me?

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1 A They would supply a division and do
 2 fill-in.
 3 Q Do you recall what division they
 4 supplied?
 5 A No. No, I'm sorry, I don't.
 6 Q What about Norco/Moark?
 7 A In what?
 8 Q What division do you recall? What
 9 division --
 10 A Ralph's.
 11 Q Any other divisions?
 12 A Not that I can recall.
 13 Q What about National? Do you recall
 14 what division National supplied?
 15 A Fred Meyer and QFC.
 16 Q Any other divisions for National?
 17 A No.
 18 Q So there are a few divisions here on
 19 this list that you haven't mentioned. Do you
 20 recall who the supplier was for the Atlanta
 21 Division?
 22 A No.
 23 Q Do you recall who the supplier of shell
 24 eggs was for the Delta Division?
 25 A Understand that I changed suppliers on

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1 an annual basis, and it's hard for me to say
 2 specifically who was. I know the Midwest
 3 divisions because they had been a supplier for me
 4 for years. Some of the other suppliers switched.
 5 So the answer to your question, no, I can't.
 6 Q Where is the Delta Division?
 7 A In the South.
 8 Q Do you know roughly where in the South?
 9 A Nashville. That's a guess. It's --
 10 it's been a long time since I've thought about
 11 these things.
 12 Q I understand. You're doing remarkably
 13 well, I think, on any number of points.
 14 You mentioned that suppliers changed.
 15 Was Cal-Maine the supplier for the Mid-South for
 16 the entire time period from say 2000 to 2006?
 17 A I can't answer that.
 18 Q You can't answer.
 19 A I don't know. I can't recall.
 20 Q You mentioned that you sometimes
 21 switched suppliers; correct?
 22 A Yes.
 23 Q For a given division? What factors did
 24 you take into account when you switched
 25 suppliers?

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1 A As I said before, quality, price,
 2 service.
 3 Q When you switched suppliers, was that
 4 as a result of the RFP process? I guess what I'm
 5 asking, did you ever get halfway through a
 6 contract with a supplier and say, "Boy, did I
 7 make a wrong call here. We need to switch
 8 suppliers"?
 9 MR. MURRAY: Objection to the form of
 10 the question.
 11 A You know, I can't recall that I ever
 12 did that.
 13 MS. LEVIN: So I'd like to mark as
 14 Exhibit 6 a document bearing Bates No.
 15 KRGE00018733 through 18738.
 16 (Deposition Exhibit 6 was marked for
 17 identification.)
 18 Q And Mr. Stull, if you'll let me know
 19 when you've had an opportunity to review
 20 Defendant's Exhibit 6.
 21 A All right.
 22 Q You've had a chance to review
 23 Exhibit 6, Mr. Stull?
 24 A Yes.
 25 Q What is Exhibit 6?

<p style="text-align: right;">Page 81</p> <p>1 A It's a request for proposal --</p> <p>2 proposal. It was a Global Net Xchange bid.</p> <p>3 Q It's dated December 1, 2003; is that</p> <p>4 correct?</p> <p>5 A December 10? Oh, yeah, December 1, I'm</p> <p>6 sorry, 2003.</p> <p>7 Q And on the last page of Exhibit 6, the</p> <p>8 name "Gary" appears. Do you see that?</p> <p>9 A Yes.</p> <p>10 Q Is that you?</p> <p>11 A It's an electronic print. I would</p> <p>12 assume it's me, but it's not my signature</p> <p>13 obviously.</p> <p>14 Q I understand it's not your signature,</p> <p>15 but were you responsible for preparing RFPs?</p> <p>16 A Yes.</p> <p>17 Q And you were responsible for preparing</p> <p>18 specifically Exhibit 6; is that correct?</p> <p>19 A No, I did not prepare Exhibit 6.</p> <p>20 Q Who prepared Exhibit 6?</p> <p>21 A I believe that was a corporate</p> <p>22 preparer. These were -- these were -- it was</p> <p>23 prepared somewhere within the Kroger system. But</p> <p>24 I can't tell you -- this was probably the first</p> <p>25 Global Net Xchange bid.</p>	<p style="text-align: right;">Page 83</p> <p>1 pursuant to Exhibit 6 have been under or packaged</p> <p>2 in accordance with each of those banners'</p> <p>3 specified packaging?</p> <p>4 A I can't reply -- I'm not sure. There</p> <p>5 may have been one banner used in all the stores,</p> <p>6 but I can't -- I can't recall.</p> <p>7 Q If you turn to the third page of</p> <p>8 Exhibit 6, it references in paragraph numbered 8,</p> <p>9 "Packaging material: All pricing includes</p> <p>10 packaging material purchased from the Kroger</p> <p>11 Company as follows." Do you see that?</p> <p>12 A Yes.</p> <p>13 Q Did Kroger require all of its shell egg</p> <p>14 suppliers to purchase packaging from Kroger?</p> <p>15 A Yes.</p> <p>16 Q And the price was -- that the bidder</p> <p>17 submitted was to include as a part of its price</p> <p>18 the cost of the packaging that it would be</p> <p>19 required to purchase from Kroger?</p> <p>20 A As I read No. 8 it says, "all pricing</p> <p>21 includes packaging material purchased from</p> <p>22 Kroger Co. as follows."</p> <p>23 Q Do you know whether the price at which</p> <p>24 Kroger sold the packaging material to the shell</p> <p>25 egg producer included a profit for Kroger?</p>
<p style="text-align: right;">Page 82</p> <p>1 Q Can you explain what a Global Net</p> <p>2 Xchange is, or was in 2003?</p> <p>3 A I can tell you what it says here. It</p> <p>4 says suppliers will submit pricing via an online</p> <p>5 negotiation process hosted by the Global Net</p> <p>6 Xchange. That's -- I mean, that's what it was.</p> <p>7 It just went on -- and there was a time frame for</p> <p>8 bids to be taken; and, as it said, it opens at</p> <p>9 2:00 p.m. on the 10th and closes at 3:00 p.m. on</p> <p>10 the 10th.</p> <p>11 Q So the Global Net Xchange was an online</p> <p>12 process for producers to submit bids to fulfill</p> <p>13 the contract that RFP -- or Exhibit 6 was issued</p> <p>14 for?</p> <p>15 A Correct.</p> <p>16 Q And Exhibit 6 references request for</p> <p>17 proposal of the Kroger Company eggs, Ralph's,</p> <p>18 Cala Bell, FoodsCo, and Food 4 Less. Do you see</p> <p>19 that at the top?</p> <p>20 A Yes.</p> <p>21 Q Were those -- Ralph's, Cala Bell,</p> <p>22 FoodsCo, and Food 4 Less -- banners under which</p> <p>23 the Kroger Company operated in 2003?</p> <p>24 A Yes.</p> <p>25 Q Would the eggs that were to be supplied</p>	<p style="text-align: right;">Page 84</p> <p>1 A I can't recall.</p> <p>2 Q Can you explain what these references</p> <p>3 are? 2X6 @ 76.50/M; do you know what that means?</p> <p>4 A Oh. Those -- that would be a</p> <p>5 two-by-six carton, or a three-by-six carton, that</p> <p>6 would have the numbers of eggs that would be in</p> <p>7 the carton.</p> <p>8 Q What's a two-by-six?</p> <p>9 A That's a standard one-dozen carton.</p> <p>10 Q Is that perforated in the middle so you</p> <p>11 can have two cartons of six each?</p> <p>12 A Well, it just means there's two columns</p> <p>13 of six eggs on each side for a total of 12 eggs</p> <p>14 in a dozen.</p> <p>15 Q And three-by-six would be one and a</p> <p>16 half dozen?</p> <p>17 A Correct.</p> <p>18 Q What about 6ct?</p> <p>19 A Six count. That would be a six-pack.</p> <p>20 Instead of splitting them, it's a separate</p> <p>21 six-pack.</p> <p>22 Q Six eggs?</p> <p>23 A Correct.</p> <p>24 Q And what's Jumbo?</p> <p>25 A That would be a one dozen jumbo size</p>

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1 eggs carton.
 2 Q And what about a sleeve? What's that?
 3 A A sleeve would vary. It would either
 4 be two dozen or two and a half dozen eggs.
 5 Q Okay. And then with the pricing it
 6 says at 76.50/M. Do you know what that means in
 7 terms of the price for the two-by-six?
 8 A The M refers to per thousand.
 9 Q So the price that the shell egg
 10 producer needed to incorporate into its price for
 11 the eggs was 76.50 per thousand for eggs packaged
 12 in a two-by-six carton. Is that correct?
 13 A That's correct.
 14 Q The next paragraph says, "All quotes
 15 are based on the Midwest Urner Barry white egg
 16 quote." Do you see that reference?
 17 A Yes.
 18 Q What's the Urner Barry white egg quote?
 19 A Urner Barry is an egg market that --
 20 it's used as a standard for pricing. It's been
 21 around for many, many years. And that's what
 22 pricing basis is used in the egg industry.
 23 Q Okay. We'll come back to that a little
 24 bit later. But let's move down to paragraph 13.
 25 "Animal Welfare Certification: Supplier must show

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1 proof they are a 'Certified Company' under UEP
 2 guidelines for the 'Animal Husbandry Guidelines
 3 for U.S. Egg Laying Flocks.'" Do you see that
 4 sentence?
 5 A Yes.
 6 Q So, again, this was a requirement that
 7 Kroger imposed on all parties that would be
 8 bidding in response to Exhibit 6 --
 9 MR. MURRAY: Object to the form of the
 10 question.
 11 Q -- is that correct?
 12 A As I said, this bid was put together by
 13 the Kroger Co. I can't answer other than what I
 14 see right there.
 15 Q But you were responsible for deciding
 16 to whom to award the successful -- to whom to
 17 award the contract that was being solicited by
 18 Exhibit 6; correct?
 19 A Yes.
 20 Q And was it your understanding that one
 21 of the things that the successful bidder had to
 22 show was that it was a certified company under
 23 UEP guidelines for the animal husbandry
 24 guidelines for U.S. egg-laying flocks?
 25 A That's what it states in the bid, yes.

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1 Q In fact it states on the preceding page
 2 of Exhibit 6 under paragraph IV, "The following
 3 describes many, but not necessarily all, of the
 4 services, agreement terms, and specifications you
 5 must include in the response to this RFP";
 6 correct?
 7 A I'm sorry, what -- what page are you
 8 on?
 9 Q The second page, the page prior to the
 10 one we were looking at.
 11 A Okay.
 12 Q Roman numeral IV. Do you see where it
 13 states, "The following describes many, but not
 14 necessarily all, of the services, agreement
 15 terms, and specifications you must include in the
 16 response to this RFP"? Do you see that sentence?
 17 A Yes, I do.
 18 Q And one of the services, agreement
 19 terms, and specifications the bidder must include
 20 was proof that it was a certified company under
 21 the UEP guidelines for the animal husbandry
 22 guidelines for U.S. egg-laying flocks; correct?
 23 A That's what's in the contract.
 24 Q And you understood that the successful
 25 bidder would have to comply with that animal

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1 welfare certification; correct?
 2 MR. MURRAY: Objection.
 3 Mischaracterizes his testimony. You can answer.
 4 A The only thing I can refer to is what's
 5 written down here. I don't recall anything about
 6 this.
 7 Q Well, the purpose of issuing an RFP is
 8 what?
 9 A (No response)
 10 Q What is the purpose of issuing an RFP?
 11 A To get product.
 12 Q To obtain product. And part of what
 13 you put in your RFP are the terms that you're
 14 requiring the successful bidder to meet; correct?
 15 A What's in there are the requirements.
 16 It's not -- I mentioned it. I didn't put this
 17 particular bid together. This was a -- I
 18 supplied some of the information, but this is
 19 kind of like a standard bid. This is not one of
 20 the normal things that I would have done.
 21 Q But you were responsible for
 22 determining whether the successful bidder met the
 23 requirements set forth in paragraphs 1 through 13
 24 of subsection IV of Exhibit 6; correct?
 25 A Yes.

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1 Q Did you ever see an RFP that did not
2 require the successful bidder to meet the animal
3 welfare certification under the UEP guidelines?
4 A I can't recall.
5 Q Did you ever receive -- well, let's
6 turn to the last page of Exhibit 6. I see that
7 there, under Conclusion, it states that RFP
8 questions are to be submitted to you. Do you see
9 that sentence?
10 A Yes.
11 Q Did you ever receive any questions
12 about whether the animal welfare certification
13 requirements were really something that Kroger
14 required the successful bidder to meet?
15 A I can't recall.
16 Q Did you ever tell anybody that the
17 animal welfare certification requirements were
18 something that did not need to be met by the
19 successful bidder?
20 A I can't recall.
21 MS. LEVIN: I'd like to mark as Exhibit
22 7 a document bearing Bates No. KRGE00019444
23 through 19451.
24 (Deposition Exhibit 7 was marked for
25 identification.)

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1 MR. NOVAK: Counsel, this is Paul
2 Novak. While the witness is reviewing the
3 document, could you reread the Bates page
4 numbers?
5 MS. LEVIN: Sure. KRGE00019444
6 through 451.
7 Okay. There's a little -- yeah.
8 Apparently there were two copies produced of the
9 same document. The one that the witness is
10 looking at is 19436 through 19443.
11 Q Have you completed your review of
12 Exhibit 7, Mr. Stull?
13 A Yes.
14 Q What is Exhibit 7?
15 A An agreement between Pace Dairy and
16 Rose Acre Farms for egg procurement for Atlanta,
17 Georgia, and Phoenix, Arizona.
18 Q And it's to cover the period
19 February 1, 2004 through January 28, 2005; is
20 that correct?
21 A That's correct.
22 Q On page -- it's the fifth page of
23 Exhibit 7, Bates No. 19440 -- is that your
24 signature on behalf of Pace Dairy Foods of
25 Indiana?

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1 A Yes, it is.
2 Q What is Pace Dairy?
3 A Pace Dairy is a wholly-owned subsidiary
4 of the Kroger Company.
5 Q What's the business of Pace Dairy?
6 A It's a cheese processing plant.
7 Q Why is Pace Dairy entering into a
8 contract for the procurement of shell eggs?
9 A At the time that's where my office was.
10 And I was -- I was at that time reporting to the
11 manager at Pace Dairy. It just kind of -- when I
12 was getting close to retirement, I did not want
13 to move, and so I stayed in Crawfordsville,
14 Indiana, and I was allowed to stay there. I had
15 my office in Pace Dairy.
16 Q Well, was this contract for the supply
17 of shell eggs to Pace Dairy?
18 A No.
19 Q To whom were the eggs purchased under
20 this contract to be supplied?
21 A They were to supply Kroger divisions in
22 Atlanta and Phoenix, Arizona.
23 Q So Kroger was the purchaser of the
24 shell eggs covered by Exhibit 7; correct?
25 A Correct.

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1 Q Would -- or do you recall whether
2 Exhibit 7 was a contract that was awarded
3 pursuant to an RFP?
4 A I would assume it is, yes.
5 Q Did you award contracts other than
6 pursuant to an RFP while you were the general
7 manager of egg procurement for Kroger?
8 A I don't recall.
9 Q Was it generally the case that an RFP
10 issued prior to the award of contract for the
11 purchase of shell eggs?
12 MR. MURRAY: Objection. Asked and
13 answered.
14 A I can't recall.
15 Q Exhibit 7 states that the volume to be
16 supplied by Rose Acre Farms to Kroger is to
17 reflect the total weekly need of the above
18 warehouses referencing Atlanta, Georgia, and
19 Phoenix, Arizona. Do you see that?
20 A Yes.
21 Q Were the eggs delivered on a weekly --
22 to be delivered on a weekly basis to those
23 locations?
24 A They were delivered daily.
25 Q Then what is the reference to the total

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1 weekly needs of the above warehouses?
 2 A To supply on a daily basis what they
 3 need on a weekly period of time.
 4 Q Well, was an estimate provided to Rose
 5 Acre Farms for the amount that you would need on
 6 a weekly basis?
 7 A We could work -- we worked off prior
 8 sales, but, as I said, I had no control over any
 9 feature activity. So if a division featured
 10 eggs, then the volume would go up, but history
 11 was used mostly.
 12 Q Well, I understand. But I'm just
 13 trying to understand how the total weekly needs
 14 were communicated to Rose Acre -- if they were
 15 communicated to Rose Acre.
 16 A Orders were received on a daily basis
 17 directly to Rose Acre from the division, and they
 18 would have to fill those orders.
 19 Q So the order between -- from Kroger to
 20 Rose Acre was a daily order?
 21 A Yes.
 22 Q And Rose Acre was required to fulfill
 23 all of Kroger's requirements for the two
 24 warehouses listed in Exhibit 7?
 25 A Yes.

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1 Q But as you've said, if Kroger decided
 2 to run a promotion for some time period and the
 3 demand increased, you might have to go to Midwest
 4 or some other supplier to fill in the additional
 5 volume required?
 6 A Yes.
 7 Q Let's take a look at the fourth page of
 8 Exhibit 7. You'll see at the bottom of that page
 9 there's a paragraph Animal Welfare Certification.
 10 "Rose Acre Farms must show proof that they are a
 11 'Certified Company' under the UEP guidelines for
 12 the 'Animal Husbandry Guidelines for U.S. Egg
 13 Laying Flocks.' A copy must be attached to this
 14 contract. Kroger will not accept any eggs from
 15 Rose Acre Farms that have not been 100 percent
 16 produced in these terms." Do you see that?
 17 A Yes.
 18 Q Was it your understanding that Rose
 19 Acre was in fact required to show proof that it
 20 was a certified company under the UEP guidelines
 21 that are referenced in paragraph XV?
 22 A I read there that Rose Acre Farms must
 23 show proof that they are a certified company.
 24 Q Well, this is a contract that you
 25 signed. What did you understand that sentence to

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1 mean?
 2 A Just what it says. I mean, I can't
 3 recall anything outside of what's written down
 4 here.
 5 Q Well, do you have any doubt about
 6 whether Rose Acre Farms was required to show
 7 proof that it was a certified company under the
 8 UEP guidelines --
 9 MR. MURRAY: Objection.
 10 Q -- by Kroger?
 11 MR. MURRAY: Objection. Lack of
 12 foundation. You can answer if you know.
 13 A Outside of what you see there, I can't
 14 answer that.
 15 Q Did you ever tell Rose Acre that that
 16 provision of Exhibit 7 did not need to be
 17 complied with?
 18 A I can't recall.
 19 Q Well, you don't recall ever telling
 20 Rose Acre that; do you?
 21 A I can't recall that.
 22 Q Do you recall ever hearing that anybody
 23 else told Rose Acre that it did not need to
 24 comply with the provisions of paragraph XV?
 25 A That's kind of -- it would be

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1 speculation. I don't recall it.
 2 Q Do you know why it is that Kroger would
 3 not accept any eggs from Rose Acre Farms that
 4 have not been 100 percent produced in these
 5 terms?
 6 MR. MURRAY: Objection. Lack of
 7 foundation. You can answer if you know.
 8 A I can't recall.
 9 Q Let's take a look at page 442, which is
 10 right after your signature. Is that your
 11 signature on page 442 of Exhibit 7?
 12 A Where would I find -- is this the page
 13 you were referring to (indicating)? I don't know
 14 what 442 is.
 15 Q It's the number down at the bottom of
 16 the page, on the right-hand corner. 19442.
 17 A Oh, I see. I see 1944. There's a hole
 18 punch took the 2 off.
 19 Q Well, that's a problem.
 20 Is that your signature on page 19442 of
 21 Exhibit 7?
 22 A Yes, it is.
 23 Q And does -- what is page 19442 of
 24 Exhibit 7?
 25 A It's a letter to me from Greg Hinton

<p style="text-align: right;">Page 97</p> <p>1 outlining a new ledger account pricing structure.</p> <p>2 Q 19442, are we looking at the right</p> <p>3 page?</p> <p>4 I don't think you're looking at 19442.</p> <p>5 I think you're looking at 19444 which is the last</p> <p>6 page of the exhibit.</p> <p>7 A Oh, okay. Okay.</p> <p>8 Q If you can turn to that page.</p> <p>9 A I'm sorry.</p> <p>10 Q Do you have a page 19442?</p> <p>11 A I don't -- yes. I do. I see it now.</p> <p>12 Q At the bottom of the page?</p> <p>13 A I see it, yeah. I'm sorry.</p> <p>14 Q And is that your signature on page</p> <p>15 19442?</p> <p>16 A Yes.</p> <p>17 Q And what is page 19442 of Exhibit 7?</p> <p>18 A It's a letter that extends all</p> <p>19 conditions and terms of the previous agreement</p> <p>20 between the Kroger Co. and Rose Acre Farms and in</p> <p>21 effect until January 28th, 2005.</p> <p>22 Q Okay. And let's go to the next page,</p> <p>23 19443.</p> <p>24 A Now I know where to look.</p> <p>25 Q I think you may have gone -- well, what</p>	<p style="text-align: right;">Page 99</p> <p>1 MR. MURRAY: Objection to the form of</p> <p>2 the question. Calls for a legal conclusion. You</p> <p>3 can answer if you know.</p> <p>4 A I can't recall. I mean, it refers to</p> <p>5 the contract.</p> <p>6 Q Well, the original contract, as you</p> <p>7 have already agreed, the contract dated</p> <p>8 February 1, 2004, through January 28, 2005, in</p> <p>9 fact required Rose Acre Farms to show proof that</p> <p>10 it was a certified company under the UEP</p> <p>11 guidelines; correct?</p> <p>12 MR. MURRAY: Object to the form of the</p> <p>13 question. Misstates his testimony. You can</p> <p>14 answer if you know.</p> <p>15 A I can only refer to what it says in the</p> <p>16 print here. I don't recall anything outside of</p> <p>17 this because it was --</p> <p>18 Q But that's what it says --</p> <p>19 A -- back then. Yes.</p> <p>20 Q -- Rose Acre Farms must show proof;</p> <p>21 correct?</p> <p>22 A Referring back to --</p> <p>23 Q Paragraph XV of the February --</p> <p>24 A XV? Yes, that's what it says there.</p> <p>25 Q Okay. And for the two contract</p>
<p style="text-align: right;">Page 98</p> <p>1 are you looking at?</p> <p>2 A Well, I don't know because I've got --</p> <p>3 I've got 1944- and a hole punch.</p> <p>4 Q Well, do you see a page that's</p> <p>5 October 17, 2005?</p> <p>6 A Yes.</p> <p>7 Q That's the page I want to be looking</p> <p>8 at.</p> <p>9 Is that your signature on the page</p> <p>10 captioned "October 17, 2005"?</p> <p>11 A Yes.</p> <p>12 Q And what is that page?</p> <p>13 A This is a letter that will extend the</p> <p>14 existing contract until January 31st, 2007.</p> <p>15 Q So, again, all terms and pricings</p> <p>16 remain unchanged; correct?</p> <p>17 A Correct.</p> <p>18 Q So for the time period February 1, 2004</p> <p>19 through January 31, 2007, Kroger's contract with</p> <p>20 Rose Acre Farms required that Rose Acre Farms</p> <p>21 show proof it was a certified company under the</p> <p>22 UEP animal welfare guidelines and further</p> <p>23 required that all eggs from Rose Acre Farms be</p> <p>24 100 percent produced in accordance with those</p> <p>25 guidelines. Is that correct?</p>	<p style="text-align: right;">Page 100</p> <p>1 extensions, until January 28, 2006, and then the</p> <p>2 second one until January 31, 2007, both required</p> <p>3 that all conditions and terms of the previous</p> <p>4 agreement remain in effect; correct?</p> <p>5 A Yes.</p> <p>6 MS. LEVIN: I'd like to mark two</p> <p>7 documents, Exhibits 8 and 9. And Exhibit 8 will</p> <p>8 be the document bearing Bates No. KRGE00020141,</p> <p>9 and Exhibit 9 will be the document bearing Bates</p> <p>10 No. KRGE00019397.</p> <p>11 (Deposition Exhibits 8 and 9 were</p> <p>12 marked for identification.)</p> <p>13 Q Have you had an opportunity to review</p> <p>14 Exhibits 8 and 9, Mr. Stull?</p> <p>15 A Yes.</p> <p>16 MS. LEVIN: And I will apologize,</p> <p>17 there's some highlighting on them that I'm quite</p> <p>18 sure did not appear in the originals, and we</p> <p>19 can -- if people want, we can substitute</p> <p>20 unhighlighted copies at a later date. I'm not</p> <p>21 sure that it's particularly illuminating.</p> <p>22 Q What is Defendant's -- what is Exhibit</p> <p>23 8?</p> <p>24 A It says it's a certification for eggs</p> <p>25 produced by animal husbandry certified company</p>

<p style="text-align: right;">Page 101</p> <p>1 Rose Acre Farms.</p> <p>2 Q And the date is April 1, 2002; is that</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q And what is Exhibit 9?</p> <p>6 A The -- basically the same thing.</p> <p>7 Q But a different date?</p> <p>8 A But a different date.</p> <p>9 Q What is the date of Exhibit 9?</p> <p>10 A June 27, 2006.</p> <p>11 Q Did Kroger require its shell egg</p> <p>12 suppliers to provide this sort of certification</p> <p>13 that's represented in Exhibits 8 and 9?</p> <p>14 MR. MURRAY: I'm going to object to</p> <p>15 Exhibit 9. This is a document that's dated after</p> <p>16 he had retired from Kroger. You can answer.</p> <p>17 A I don't recall ever seeing it.</p> <p>18 Q You don't recall ever requiring the</p> <p>19 submission of a certificate like that in Exhibit</p> <p>20 8 or 9?</p> <p>21 A No, I don't -- I don't recall.</p> <p>22 Q Do you know whether anybody at Kroger</p> <p>23 was in charge of ensuring that shell egg</p> <p>24 suppliers were in compliant with the -- in</p> <p>25 compliance with the UEP animal welfare guidelines</p>	<p style="text-align: right;">Page 103</p> <p>1 A Yes.</p> <p>2 Q And is there a division that the</p> <p>3 Phoenix, Arizona, warehouse corresponds to on</p> <p>4 Exhibit 3?</p> <p>5 A Yes.</p> <p>6 Q Which division is that?</p> <p>7 A That would be Fry's.</p> <p>8 Q Okay. You can put Exhibit 7 to one</p> <p>9 side. But do keep Exhibit 3 out because I'll</p> <p>10 have the same question about some other</p> <p>11 contracts.</p> <p>12 So what is Exhibit 10?</p> <p>13 A An agreement between Cal-Maine Foods</p> <p>14 and Pace Dairy for supplying the eggs used to</p> <p>15 Kroger at the warehouse location in Memphis,</p> <p>16 Tennessee.</p> <p>17 Q So we can get this out of the way now.</p> <p>18 Is there a division that the Memphis, Tennessee,</p> <p>19 warehouse corresponds to on Exhibit 3?</p> <p>20 A I think it's Mid-South. I'm not a</p> <p>21 hundred percent sure right now, but I think it</p> <p>22 is.</p> <p>23 Q And Exhibit 10 is for the time period</p> <p>24 February 1, 2004, through January 29, 2005?</p> <p>25 A Correct.</p>
<p style="text-align: right;">Page 102</p> <p>1 for egg-laying flocks?</p> <p>2 A It would be speculation.</p> <p>3 Q Let's take a look at a document that I</p> <p>4 will mark as Exhibit 10. And it bears Bates No.</p> <p>5 KREEG00018833 through 36.</p> <p>6 (Deposition Exhibit 10 was marked for</p> <p>7 identification.)</p> <p>8 Q You'll let me know when you're finished</p> <p>9 reviewing Exhibit 10.</p> <p>10 I'm sorry to do this, but I'd like to</p> <p>11 rewind just for one minute to Exhibit 7.</p> <p>12 A Sure.</p> <p>13 Q And compare that with Exhibit 3.</p> <p>14 Exhibit 3 is the October 1, 2002, memo</p> <p>15 from Lisa Beth Miller. You may already have it</p> <p>16 out because we were looking at it earlier.</p> <p>17 A Okay. I do.</p> <p>18 Q Okay. On Exhibit 7 we mentioned that</p> <p>19 the contract was for the supply of shell eggs to</p> <p>20 the Atlanta, Georgia, and Phoenix, Arizona,</p> <p>21 warehouse locations; correct?</p> <p>22 A Yes.</p> <p>23 Q And is the Atlanta, Georgia, warehouse</p> <p>24 the warehouse for the Atlanta Division on Exhibit</p> <p>25 3?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q Is that your signature on the last page</p> <p>2 of Exhibit 10?</p> <p>3 A Yes, it is.</p> <p>4 Q Similar to Exhibit 7, although Exhibit</p> <p>5 10 is an agreement between Pace Dairy and</p> <p>6 Cal-Maine Foods, is it correct that it is for the</p> <p>7 supply of shell eggs to Kroger stores via the</p> <p>8 Memphis, Tennessee, warehouse location?</p> <p>9 MR. MURRAY: Objection to the form of</p> <p>10 the question.</p> <p>11 A Would you restate that, please?</p> <p>12 MS. LEVIN: Can you read it back.</p> <p>13 (The reporter read the requested</p> <p>14 question.)</p> <p>15 MR. MURRAY: Same objection.</p> <p>16 A Yes.</p> <p>17 Q And let's turn to the final page of</p> <p>18 Exhibit 10 again. Paragraph XIV -- the second</p> <p>19 paragraph XIV, I suspect it's supposed to be</p> <p>20 paragraph XV -- Animal Welfare Certification; do</p> <p>21 you see that paragraph?</p> <p>22 A Yes, I do.</p> <p>23 Q And again, the provision reads,</p> <p>24 "Cal-Maine Foods, Inc., must show proof that they</p> <p>25 are a 'Certified Company' under the UEP</p>

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1 guidelines for the 'Animal Husbandry Guidelines
2 for U.S. Egg Laying Flocks.'" Do you see that
3 sentence?

4 A Yes, I do.

5 Q Was it your understanding when you
6 signed Exhibit 10 that it was a requirement that
7 Cal-Maine -- Cal-Maine Foods comply with the UEP
8 animal welfare guidelines?

9 MR. MURRAY: Objection. Form of the
10 question. You can answer if you know.

11 A All I can tell you is what it states
12 there.

13 Q Did you read --

14 A My recollection is old.

15 Q Did you read contracts before you
16 signed them for Kroger?

17 A Usually.

18 Q Did you read shell egg procurement
19 contracts before you signed them for Kroger?

20 MR. MURRAY: Objection to the form of
21 the question.

22 A I can't recall.

23 Q If you had any questions about the
24 terms of a contract that you were signing on
25 behalf of Kroger, would you have asked someone

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1 what they meant?

2 MR. MURRAY: Objection. Calls for
3 speculation.

4 A I can't -- I can't recall.

5 Q You don't recall having any question
6 about the meaning of paragraph -- the paragraph
7 pertaining to animal welfare certification when
8 you signed Exhibit 10?

9 A Those decisions were above my pay
10 grade. In Kroger --

11 Q I'm not asking who made the decision,
12 Mr. Stull, I'm asking whether you understood the
13 concept --

14 MR. MURRAY: You cut him off. He was
15 explaining something.

16 MS. LEVIN: He's not answering the
17 question.

18 MR. MURRAY: You cut him off.

19 MS. LEVIN: Fine.

20 Q Then complete your answer, Mr. Stull.

21 A It's not -- it's not -- I don't -- I

22 didn't question Kroger.

23 Q Okay. What did you understand -- what
24 do you today understand the paragraph pertaining
25 to animal welfare -- welfare certification to

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1 mean?

2 MR. MURRAY: Objection. Lack of
3 foundation. You can answer if you know.

4 A Today, you know, my memory was as -- I
5 don't remember much about my work experience.

6 And so, I have no -- I have no -- I mean I'm not
7 interested in what's there today.

8 Q Well, I understand. Then let's ask
9 about the time period. I was trying to make it
10 easier for you. But we can --

11 A Oh, I'm sorry.

12 Q -- go back to 2004. Did you have an
13 understanding at the time that you signed Exhibit
14 10 what the meaning of the paragraph relating to
15 animal welfare certification was?

16 MR. MURRAY: Object to the form of the
17 question.

18 A I can't recall.

19 Q Did you ever tell anyone from Cal-Maine
20 that the requirements of the provisions of the
21 animal welfare certification paragraph in Exhibit
22 10 did not need to be complied with?

23 A I can't recall.

24 Q You don't recall anybody ever telling
25 anybody from Cal-Maine that, though; do you?

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1 MR. MURRAY: Objection. Asked and
2 answered.

3 A I -- I don't recall.

4 Q You have no recollection of stating
5 that to Cal-Maine?

6 MR. MURRAY: Objection. Asked and
7 answered.

8 A I can't recall it.

9 Q And could you read the last sentence of
10 Exhibit 10.

11 A "Kroger will not accept any eggs from
12 Cal-Maine Foods, Incorporated, that has not
13 been -- have not been 100 percent produced in
14 these terms."

15 Q And the terms are referring to the
16 animal welfare guidelines for UEP; is that
17 correct?

18 MR. MURRAY: Objection. Calls for a
19 legal conclusion. And misstates the document.

20 Q Is that your understanding, Mr. --
21 Mr. Stull?

22 A I go with what's -- you know, I can
23 only say it's there, what's there is there. I
24 don't recall it.

25 Q Let's do it this way. Why don't you

<p style="text-align: right;">Page 109</p> <p>1 read the entirety of paragraph XIV, Animal 2 Welfare Certification, into the record. 3 A Okay. "Animal Welfare Certification. 4 Cal-Maine Foods, Incorporated, must show proof 5 that they are a 'Certified Company' under the UEP 6 guidelines for the 'Animal Husbandry Guidelines 7 for U.S. Egg Laying Flocks.' A copy must be 8 attached to this contract. Kroger will not 9 accept any eggs from Cal-Maine Foods, 10 Incorporated, that have not been 100 percent 11 produced in these terms." 12 Q And you have no understanding of what 13 that paragraph means; is that your testimony? 14 MR. MURRAY: Objection. Asked and 15 answered. 16 A I understand what it's saying. 17 Q And what do you understand it to be 18 saying? 19 A That Cal-Maine Foods, Incorporated, 20 must show proof that they are a certified company 21 under the UEP guidelines for the animal husbandry 22 guidelines for U.S. egg laying flocks. A copy 23 must be attached to this contract. Kroger will 24 not accept any eggs from Cal-Maine Foods, 25 Incorporated, that have not been 100 percent</p>	<p style="text-align: right;">Page 111</p> <p>1 MS. LEVIN: I will do as I see fit, 2 Mr. Murray. 3 MR. MURRAY: Well, I'm not going to let 4 you -- I'm not going to let you lecture my 5 client. If you're not asking a question -- 6 Q Mr. Stull, do you have a recollection 7 of somebody else preparing Exhibit 4? 8 A No. 9 Q And you signed Exhibit 4; correct? 10 A That's my signature. 11 Q And you believed at the time that you 12 signed Exhibit 4 that the representations in that 13 letter were correct? 14 MR. MURRAY: Objection. 15 Mischaracterizes prior testimony. 16 A As I -- as I said before, that letter 17 was signed shortly before I retired. A lot of 18 things crossed my desk that I may have -- may 19 have signed that I really didn't read thoroughly. 20 Q Well, we've gone through various 21 provisions and we've got your testimony on what 22 you thought. Do you have anything to add beyond 23 what you've now said about Exhibit 4? 24 MR. MURRAY: Objection. Broad. 25 A No.</p>
<p style="text-align: right;">Page 110</p> <p>1 produced in these terms. 2 Q And that contract provision is in fact 3 consistent with the RFP that we were looking at 4 earlier today as Exhibit 6; correct? 5 A Correct. 6 Q And it's also consistent with the 7 letter that you sent to Mr. Gregory on 8 August 2nd, 2005, that is Exhibit -- 9 A Regarding that letter -- 10 Q -- 4? 11 A -- I think I said at the time that I 12 wasn't really sure that I initiated that letter. 13 And I can tell you that's not my style of 14 writing. I would assume that somebody sent me 15 that letter and asked me to sign it. 16 Q Mr. Stull, you have been very reluctant 17 to assume anything today, and we've instructed 18 you several times not to assume anything. So we 19 don't want testimony about assumptions. 20 MR. MURRAY: Objection. 21 MS. LEVIN: No. 22 MR. MURRAY: You're not here to -- 23 you're not here to lecture the witness. You can 24 ask questions, and he can give you answers. 25 You're not here to lecture my client.</p>	<p style="text-align: right;">Page 112</p> <p>1 Q And you don't have a recollection of 2 somebody else providing you Exhibit 4 and asking 3 you to sign it; do you? 4 A No. 5 Q Thank you. 6 THE VIDEOGRAPHER: Counsel? 7 MS. LEVIN: Yes? 8 THE VIDEOGRAPHER: Do you mind if we do 9 a tape change? We have -- 10 MS. LEVIN: No. 11 THE VIDEOGRAPHER: -- a few minutes 12 left. 13 MS. LEVIN: Okay. Fine. 14 MR. MURRAY: Let's do lunch. 15 MS. LEVIN: What time is it? 16 THE VIDEOGRAPHER: We're going off the 17 record. The time is 12:28 p.m. 18 (A recess was taken.) 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 113</p> <p>1 AFTERNOON SESSION</p> <p>2 DIRECT EXAMINATION, (CONTINUING),</p> <p>3 QUESTIONS BY CHRISTINE C. LEVIN:</p> <p>4 (Deposition Exhibits 11 through 16 were</p> <p>5 marked for identification.)</p> <p>6 THE VIDEOGRAPHER: This is the</p> <p>7 beginning of Tape 3. The time is 1:19 p.m., and</p> <p>8 we are back on the record.</p> <p>9 Q Good afternoon, Mr. Stull.</p> <p>10 A Good afternoon.</p> <p>11 Q I'm going to ask the court reporter to</p> <p>12 share with you a document that we have marked as</p> <p>13 Exhibit 11, and it bears Bates Nos. KRGEG00019290</p> <p>14 through 291.</p> <p>15 MR. MURRAY: Counsel, could I please</p> <p>16 have a copy?</p> <p>17 MS. LEVIN: I'm sorry. I think there's</p> <p>18 two copies of the same thing stapled together.</p> <p>19 It's the same thing stapled together. Two copies</p> <p>20 of the same thing. He needs to look at the first</p> <p>21 piece of paper.</p> <p>22 Q Have you had a chance to review Exhibit</p> <p>23 11, Mr. Stull?</p> <p>24 A I'm sorry?</p> <p>25 Q Have you had a chance to review Exhibit</p>	<p style="text-align: right;">Page 115</p> <p>1 A "NuCal Foods, Incorporated, must show</p> <p>2 proof that they are a 'Certified Company' under</p> <p>3 UEP guidelines for the 'Animal Husbandry</p> <p>4 Guidelines for U.S. Egg Laying Flocks.' A copy</p> <p>5 must be attached to this contract."</p> <p>6 Q So paragraph 10 contained a requirement</p> <p>7 for NuCal Foods?</p> <p>8 A To prove that they are a certified</p> <p>9 company, yes.</p> <p>10 Q Is that your signature on page 19291?</p> <p>11 A Yes.</p> <p>12 Q What was the time period -- let's go</p> <p>13 back to the first page. And there's some</p> <p>14 handwriting, but underneath the handwriting it</p> <p>15 states the contract should be effective April 1,</p> <p>16 2005, to January 26, 2008; is that correct?</p> <p>17 A That's correct.</p> <p>18 Q Is it your understanding that that's</p> <p>19 the time period that was covered by the contract</p> <p>20 that was signed by you?</p> <p>21 A Yes.</p> <p>22 Q And --</p> <p>23 A Although I was surprised it was not</p> <p>24 signed by NuCal as well.</p> <p>25 Q The -- then there's some handwriting</p>
<p style="text-align: right;">Page 114</p> <p>1 11?</p> <p>2 A I've started. I haven't finished it</p> <p>3 yet.</p> <p>4 Q Have you completed your review of</p> <p>5 Exhibit 11?</p> <p>6 A Yes, I have.</p> <p>7 Q What is Exhibit 11?</p> <p>8 A It's an agreement between the Kroger</p> <p>9 Company and NuCal Foods to supply eggs to the</p> <p>10 Ralph's, FoodsCo, and Cala warehouses located in</p> <p>11 Northern California and/or in the DSD stores.</p> <p>12 Q What's a DSD store?</p> <p>13 A Direct store delivery. In that they do</p> <p>14 not go through a warehouse, the supplier would</p> <p>15 deliver directly to the store.</p> <p>16 Q And was that direct store delivery for</p> <p>17 the Ralph's, FoodsCo, and Cala banner stores?</p> <p>18 A It was for some of them, but I couldn't</p> <p>19 tell you which -- if it was for all of them.</p> <p>20 Q But it would at least be limited to</p> <p>21 those three brands; correct?</p> <p>22 A Correct.</p> <p>23 Q Take a look at the bottom of the first</p> <p>24 page, paragraph 10, Animal Welfare Certification.</p> <p>25 Could you read that into the record?</p>	<p style="text-align: right;">Page 116</p> <p>1 that's marked out April 1, 2005, and looks</p> <p>2 like -- can you read what date is written in</p> <p>3 instead of April 1, 2005?</p> <p>4 A As near as I can tell it says</p> <p>5 April 27th, 2008.</p> <p>6 Q So if there was a contract between</p> <p>7 Kroger and NuCal's for April 27th, 2008 --</p> <p>8 beginning April 27, 2008, that would not have</p> <p>9 been signed by you; correct?</p> <p>10 A Correct.</p> <p>11 Q Okay. Let's go to a document that has</p> <p>12 been marked as Exhibit 12. And it bears Bates</p> <p>13 Nos. KREG00019063 through 19070. Let me know</p> <p>14 when you have completed your review.</p> <p>15 Mr. Stull, did you do anything to</p> <p>16 prepare for your deposition today?</p> <p>17 A No.</p> <p>18 Q You didn't meet with counsel to prepare</p> <p>19 for the deposition?</p> <p>20 A I talked with my lawyer.</p> <p>21 Q How long did you speak with your</p> <p>22 lawyer?</p> <p>23 A A while. I didn't -- I don't own a</p> <p>24 watch. I don't keep track of time.</p> <p>25 Q I understand that, but surely you know</p>

<p style="text-align: right;">Page 117</p> <p>1 whether it was one hour or one day, for instance?</p> <p>2 A Oh. Hour, hour and a half, I would</p> <p>3 guess.</p> <p>4 Q Did you review any documents during the</p> <p>5 course of that time?</p> <p>6 MR. MURRAY: Don't tell them anything</p> <p>7 that you discussed.</p> <p>8 Q Haven't asked you anything that was</p> <p>9 discussed.</p> <p>10 MR. MURRAY: Just warning so nothing</p> <p>11 comes out.</p> <p>12 Q Let's go back to Exhibit 12. What is</p> <p>13 Exhibit 12?</p> <p>14 A It's a contract between Pace Dairy and</p> <p>15 Midwest Poultry. When I say Pace Dairy, that's</p> <p>16 the Kroger Company.</p> <p>17 Q Okay. And for the supply of eggs to</p> <p>18 various Kroger warehouses; correct?</p> <p>19 A Correct.</p> <p>20 Q The date of the contract is what?</p> <p>21 A February 1, 2004, through January 28,</p> <p>22 2006.</p> <p>23 Q And on the fourth page of Exhibit 12,</p> <p>24 is that your signature?</p> <p>25 A Yes, it is.</p>	<p style="text-align: right;">Page 119</p> <p>1 A Yes.</p> <p>2 Q Do you know why Midwest eggs were</p> <p>3 purchased on the basis of cost plus program?</p> <p>4 A It was a mutual -- excuse me -- a</p> <p>5 mutual arrangement between Kroger and Midwest</p> <p>6 Poultry to achieve the best price at a fair</p> <p>7 market value.</p> <p>8 Q And did you have a cost plus program</p> <p>9 with any other of your suppliers while you were</p> <p>10 the egg procurement general manager?</p> <p>11 A I -- I honestly can't recall if I did</p> <p>12 or not. I know I had it with Midwest Poultry.</p> <p>13 If I did, I'm sure you have a copy of it.</p> <p>14 Q Again, we'll come back to pricing a</p> <p>15 little bit later, but if you could turn to the</p> <p>16 fourth page where your signature appears on</p> <p>17 Exhibit 12.</p> <p>18 A Yes.</p> <p>19 Q Could you read into the record the</p> <p>20 paragraph XIV on that page?</p> <p>21 A Animal Welfare Certification. Midwest</p> <p>22 Poultry Services, L.P., must show proof that they</p> <p>23 are a 'Certified Company' under UEP guidelines</p> <p>24 for the 'Animal Husbandry Guidelines for U.S. Egg</p> <p>25 Laying Flocks.' A copy must be attached to this</p>
<p style="text-align: right;">Page 118</p> <p>1 Q Now looking back at Exhibit 3 again,</p> <p>2 I'd like to go through the same exercise of</p> <p>3 determining which of the divisions correlate with</p> <p>4 these particular warehouse locations.</p> <p>5 A All right.</p> <p>6 Q Was there a division that correlated to</p> <p>7 the Shelbyville, Indiana, warehouse?</p> <p>8 A Yes. That would be the Central</p> <p>9 Division.</p> <p>10 Q And what about Detroit, Michigan?</p> <p>11 A That would be the Michigan Division.</p> <p>12 Q Louisville, Kentucky?</p> <p>13 A Mid-South Division.</p> <p>14 Q Columbus, Ohio?</p> <p>15 A I believe the Columbus Division.</p> <p>16 Q And Roanoke, Virginia?</p> <p>17 A That would be the Mid-Atlantic</p> <p>18 Division.</p> <p>19 Q And was there just one warehouse for</p> <p>20 each of these divisions in Exhibit 3?</p> <p>21 A Yes.</p> <p>22 Q Now, for certain of the egg purchases</p> <p>23 covered by Exhibit 12 there's reference to a cost</p> <p>24 plus program. Do you see that in the last</p> <p>25 paragraph on the first page of Exhibit 12?</p>	<p style="text-align: right;">Page 120</p> <p>1 contract. Kroger will not accept any eggs from</p> <p>2 Midwest Poultry Services that have not been</p> <p>3 100 percent produced in these terms."</p> <p>4 Q And your understanding was that this</p> <p>5 was a requirement under the contract to Midwest?</p> <p>6 MR. MURRAY: Objection to the form of</p> <p>7 the question.</p> <p>8 A My understanding is just what's -- you</p> <p>9 know, you read what's in there.</p> <p>10 Q But your understanding is that Midwest</p> <p>11 Poultry had to show proof of their compliance of</p> <p>12 the guidelines?</p> <p>13 MR. MURRAY: Same objection.</p> <p>14 A It says Kroger will not accept eggs</p> <p>15 from Midwest Poultry Services that have not been</p> <p>16 100 percent produced in these terms.</p> <p>17 Q And you never told Midwest Poultry that</p> <p>18 that particular paragraph did not need to be</p> <p>19 adhered to or complied with?</p> <p>20 A I don't recall.</p> <p>21 Q Well, do you recall ever telling</p> <p>22 Midwest Poultry that the requirement under the</p> <p>23 heading animal welfare certification need not be</p> <p>24 complied with?</p> <p>25 A I don't recall.</p>

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1 Q Let's turn to the last page of Exhibit
 2 12. Can you tell me what that is?
 3 A It's an extension of the existing
 4 contract until January 31st, 2007.
 5 Q The existing contract being the first
 6 four pages of Exhibit 12?
 7 A Yes.
 8 Q And is that your signature on the last
 9 page of Exhibit 12?
 10 A Yes, it is.
 11 Q And looking at the next-to-the-last
 12 page of Exhibit 12, what is that?
 13 A Yes.
 14 Q What is that page?
 15 A It's an animal care certification for
 16 Midwest Poultry Service.
 17 Q Reflecting that the company has passed
 18 an animal welfare audit for the calendar year
 19 2003; correct?
 20 A Correct.
 21 Q Let's move on to Exhibit 13, which is a
 22 document bearing Bates No. KRGEED00010798 and
 23 99. As you'll see, it's an email chain, so
 24 sometimes it's a little easier to start at the
 25 end and review it, but I leave that up to you.

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1 Have you finished your review of
 2 Exhibit 13?
 3 A Pardon me?
 4 Q Have you completed your review of
 5 Exhibit 13?
 6 A Yes, I have.
 7 Q And is Exhibit 13 a series of emails
 8 relating to Ralph's eggs that includes an email
 9 from you dated August 1, 2003?
 10 A Yes.
 11 Q Let's turn on to the back side of
 12 Exhibit 13. And I'd like to focus your attention
 13 on that last piece of the email chain from Bob
 14 Zincke sent by Mary LaBolt to Geoffrey Covert.
 15 Do you see that?
 16 A Yes, I do.
 17 Q Who is Bob Zincke, if I'm saying his
 18 name right?
 19 A He is a Kroger person. I'm not sure
 20 exactly what his title is, but he's in senior
 21 management.
 22 Q Did he have anything to do with egg
 23 procurement?
 24 A No.
 25 Q Was he ever the person that you

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1 reported to?
 2 A Not -- no. Not directly.
 3 Q Do you recall who Geoffrey Covert is?
 4 A Yes, I do.
 5 Q And who is Mr. Covert?
 6 A Geoffrey Covert was the vice president
 7 of manufacturing.
 8 Q Could you read the text of the email
 9 from Bob to Mr. Covert?
 10 A "Ralph says we negotiated a 1.7-cent
 11 increase per dozen cost in eggs for animal care.
 12 What is this about?"
 13 Q Okay. And then going further up in the
 14 chain, Mr. Covert's response to Bob, which
 15 appears at the top of the second page, you can
 16 see the transmission link. So Mr. Covert's
 17 response is that he's copying you; correct?
 18 A Mm-hmm.
 19 Q Who buys all of our eggs nationally; is
 20 that correct?
 21 A Yes.
 22 Q And, then, let's go on to your response
 23 to this question about Ralph's negotiation of a
 24 1.7-cent increase per dozen eggs. Do you see
 25 that? Can you read into the record your response

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1 to Mr. Covert?
 2 MR. MURRAY: That's not a question.
 3 He's not going to do any more reading into the
 4 record. You can ask him a question. That's not
 5 a question.
 6 MS. LEVIN: Are you instructing him not
 7 to answer?
 8 MR. MURRAY: I'm telling him he doesn't
 9 have to read. He can read it to himself and
 10 answer questions.
 11 MS. LEVIN: I'd like for the record to
 12 reflect what the document says, unless you're
 13 instructing him not to answer.
 14 MR. MURRAY: It's not a question. It's
 15 not a question.
 16 MS. LEVIN: It is a question.
 17 MR. MURRAY: What?
 18 MS. LEVIN: Mr. Murray, I've asked him
 19 to read that sentence.
 20 MR. MURRAY: We're not -- but that's
 21 not a proper procedure. We're not going to do
 22 that.
 23 MS. LEVIN: All right. If you're
 24 not -- we have been doing it for depositions
 25 taken by you ad infinitum. I'm happy to hear --

<p style="text-align: right;">Page 125</p> <p>1 let me finish -- I'm happy to hear that it's 2 improper to have witnesses read things into the 3 record because we will certainly stop doing it on 4 our side. 5 MR. MURRAY: Okay. 6 Q Mr. Stull, would you please read into 7 the record you response to -- 8 Tell us, what was your response to 9 Mr. Covert, if you can do that without reading it 10 into the record? 11 A My response was that we support the FMI 12 guidelines. 13 Q Your response was that the corporation, 14 Kroger, supports the FMI guidelines; correct? 15 A Yes. 16 Q And what were the FMI guidelines that 17 the corporate -- that Kroger had made the 18 decision to support? 19 A I can't -- I can't recall what the 20 guidelines were. 21 Q Well, read the rest of the sentence. 22 Does that help you with what the guidelines were? 23 A Yes. I can see what it says there, 24 that -- 25 Q Okay, what did it say?</p>	<p style="text-align: right;">Page 127</p> <p>1 A (No response) 2 Q Those were your words; correct? Mr. -- 3 Mr. Stull? 4 A I'm trying to find where it says that. 5 Q Why don't you read the first sentence. 6 A I see where it says costs would rise 7 due to the costs associated to suppliers to 8 manage the program. 9 Q Right. Those were your words back to 10 Mr. Covert. Read that -- why don't you read that 11 entire sentence for us. 12 MR. MURRAY: You can read it to 13 yourself. 14 MS. LEVIN: Are you instructing him not 15 to read -- 16 MR. MURRAY: I'm telling him -- 17 MS. LEVIN: Okay, you're not 18 instructing him not to answer, then just -- we 19 hear your objection. 20 Q Could you please -- 21 MR. MURRAY: But it's not a question. 22 MS. LEVIN: It is a question. I said, 23 "Would you please read that second sentence of 24 your email for the record." That is a question. 25 If you're instructing --</p>
<p style="text-align: right;">Page 126</p> <p>1 A Calling for fewer birds per cage as 2 well as other costs associated with animal 3 welfare. 4 Q Correct. So the guidelines that you 5 say that Kroger made the decision to accept were 6 the FMI guidelines adopting the UEP producer 7 standards for animal welfare; correct? 8 A Correct. 9 Q And you're also saying that the 10 corporation made that decision to -- as well -- 11 adopt as well other costs associated with animal 12 welfare; correct? 13 A I'm not sure I follow your question. 14 Q Well, why don't you read the sentence 15 that I was just quoting from. 16 A Okay. 17 Q Why don't you read that aloud, and then 18 you'll understand the question, I think. 19 MR. MURRAY: You can read it to 20 yourself. 21 A Okay, I've read the question -- read 22 the sentence. 23 Q Okay. And the sentence says that 24 Kroger made the decision as well to accept other 25 costs associated with animal welfare; correct?</p>	<p style="text-align: right;">Page 128</p> <p>1 MR. MURRAY: Okay, the answer's "yes" 2 or "no" to that. It's not to read it. 3 MS. LEVIN: Mr. Murray, are you 4 instructing your witness not to read into the 5 record -- 6 MR. MURRAY: I'm telling him -- 7 MS. LEVIN: -- his very words from his 8 email? Because we'll get on the phone with the 9 judge right now if that's your instruction. 10 MR. MURRAY: I'm telling him to read 11 the sentence and then answer questions on it. 12 Q Mr. Stull, would you please read for 13 the record the second sentence in your email? 14 Your lawyer's not instructing you not 15 to answer, so you can decide personally -- 16 A I don't understand -- 17 MR. MURRAY: He doesn't have to do it. 18 A I -- I don't understand why you want to 19 read that into the record. 20 Q Because I'd like the record to reflect 21 what your words were back to Mr. Covert. What 22 were your words back to Mr. Covert? 23 A Aren't they right here in print? 24 Q Yes, they are, and I would like -- 25 A Then why do I need to read them out</p>

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1 loud?
 2 Q Are you -- Mr. Stull, if you are not
 3 going to answer my questions, we'll have to get
 4 on the phone with the judge.
 5 MR. MURRAY: He's willing to answer
 6 your questions.
 7 MS. LEVIN: Okay.
 8 Q Then answer --
 9 MR. MURRAY: Ask him a question about
 10 it.
 11 MS. LEVIN: I asked him a question. I
 12 asked him, "What was your response back to
 13 Mr. Covert?"
 14 MR. MURRAY: You can answer.
 15 A My response is exactly what's written
 16 down here.
 17 Q Okay. Well, please tell us what is
 18 written.
 19 MR. MURRAY: Objection. Asked and
 20 answered.
 21 Q Mr. Stull, are you going to decline to
 22 tell us what your answer was besides referring to
 23 the document?
 24 MR. MURRAY: You're mischaracterizing
 25 what he said. He did tell you what he's -- the

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1 answer.
 2 MS. OSBORN: Mr. Murray, I want to
 3 state an objection for the record on behalf of
 4 Midwest. We have sat through days and days and
 5 days of depositions in this matter where
 6 plaintiffs have done nothing more than ask our
 7 witnesses to read into the record documents and
 8 statements in documents. I would ask that
 9 Mr. Stull please read into the record what
 10 Ms. Levin is asking him to read.
 11 MS. CRABTREE: I second that objection
 12 for Rose Acre.
 13 Q Mr. Stull, if we can't get you to do
 14 this, we'll need to get on the phone with the
 15 judge. And if we can't get the judge on the
 16 phone today, we'll conclude the deposition and
 17 we'll go to the judge, and I suspect we will end
 18 up back here with you having to do what I'm
 19 asking you to do. This is not an improper
 20 procedure.
 21 Would you please read for us into the
 22 record what your response was to Mr. Covert.
 23 A Are you referring to that one sentence?
 24 Q I would like for you to read all three
 25 sentences, quite frankly.

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1 MR. MURRAY: Object. It's not a
 2 question.
 3 MS. LEVIN: We hear you.
 4 Q Can you please --
 5 MR. MURRAY: That's uncalled for.
 6 MS. LEVIN: I think I've been
 7 incredibly patient with this bogus objection.
 8 Q Can you please read into the record
 9 your response to Mr. Covert?
 10 MR. MURRAY: It's entirely uncalled
 11 for.
 12 Q Can you do that, Mr. Stull?
 13 A I don't see any point in doing it, but
 14 I --
 15 Q I understand that you don't see any
 16 point, Mr. -- Mr. Stull, but I've been taking
 17 depositions for a long time and this is something
 18 that we do sometimes. And, so, I'm asking you
 19 very nicely if you would please read into the
 20 record your response to Mr. Covert.
 21 MR. MURRAY: Objection to the form of
 22 the question.
 23 A (No response)
 24 Q These were your words?
 25 A These are my words.

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1 Q Okay. Let's hear them.
 2 A "The corporation made the decision to
 3 support the FMI guidelines adopting the UEP --
 4 United Egg Producers standards for animal welfare
 5 calling for fewer birds per cage as well as other
 6 costs associated with animal welfare (evidenced
 7 by the May 31st, 2002, News Release on the Kroger
 8 website). Corporate Category Management
 9 communicated these guidelines to the divisions
 10 and mentioned then that our costs would rise due
 11 to the costs associated to suppliers to manage
 12 the program. We continue to talk about this on
 13 our monthly Perishable calls, so I'm a little
 14 surprised there is a question. By the way, the
 15 average cost increase for the industry is 2.5
 16 cents."
 17 Q Is this an email that you wrote? Are
 18 those your words?
 19 A It sounds like a little higher level
 20 than I normally write. Umm --
 21 Q Do you question what --
 22 MR. MURRAY: Let him finish. Let him
 23 finish his answer.
 24 A Sometimes --
 25 MR. MURRAY: Please.

<p style="text-align: right;">Page 133</p> <p>1 A Sometimes some things were prepared and</p> <p>2 I just passed them along.</p> <p>3 Q Prepared by whom?</p> <p>4 A In this case, probably somebody within</p> <p>5 the category management.</p> <p>6 Q Do you have a --</p> <p>7 A Corporate category management.</p> <p>8 Q Do you have a recollection of somebody</p> <p>9 in corporate category management dictating these</p> <p>10 words to you for inclusion in the email?</p> <p>11 A No, I -- no, I don't.</p> <p>12 Q Do you have any doubt that you prepared</p> <p>13 this email and sent it to Mr. Covert?</p> <p>14 MR. MURRAY: Objection to the form of</p> <p>15 the question. Mischaracterizes his testimony.</p> <p>16 A I know I sent the email.</p> <p>17 Q Okay. Do you have any doubt about the</p> <p>18 accuracy of the words in the email?</p> <p>19 A You're asking me to remember something</p> <p>20 from eight years ago, as far as accuracy, and I</p> <p>21 can honestly say I don't -- I don't recall.</p> <p>22 Q Was it your practice to send emails</p> <p>23 that were not accurate or that you knew were not</p> <p>24 accurate at the time you were sending them?</p> <p>25 MR. MURRAY: Objection to the form of</p>	<p style="text-align: right;">Page 135</p> <p>1 A It's saying that the costs for the</p> <p>2 industry would drive costs for the supplier.</p> <p>3 Q Explain what you mean by that. Who is</p> <p>4 the -- I take that back.</p> <p>5 Who is the "our" referring to when it</p> <p>6 says "our costs would rise"?</p> <p>7 A I'm trying to find that.</p> <p>8 Q It's in the second sentence. At the</p> <p>9 end of the fourth line and the beginning of the</p> <p>10 fifth line of your email response to Mr. Covert.</p> <p>11 A The one where it says "We continue to</p> <p>12 talk"?</p> <p>13 Q No, it's in the sentence before that.</p> <p>14 Right above that. The fourth line, not the</p> <p>15 fifth. "Our costs," who was the "our"?</p> <p>16 A The suppliers were telling us their</p> <p>17 costs would rise. So, naturally, in the</p> <p>18 contracting situation, that would cause our costs</p> <p>19 to rise.</p> <p>20 Q Kroger's costs?</p> <p>21 A Kroger's costs.</p> <p>22 Q And it further states that "We continue</p> <p>23 to talk about this on our monthly Perishable</p> <p>24 calls." What were the monthly perishable calls?</p> <p>25 A I was not in the monthly perishable</p>
<p style="text-align: right;">Page 134</p> <p>1 the question.</p> <p>2 A No. I tried to be accurate.</p> <p>3 Q Okay. And it was your understanding at</p> <p>4 the time you sent this email that it was correct</p> <p>5 that corporate category management had mentioned</p> <p>6 that Kroger's costs would rise due to the cost</p> <p>7 associated with the suppliers to manage the</p> <p>8 animal welfare program; correct?</p> <p>9 MR. MURRAY: Objection. Lack of</p> <p>10 foundation.</p> <p>11 A You're asking me to remember something</p> <p>12 that I can't remember from that long ago.</p> <p>13 Q But you don't have any doubt about the</p> <p>14 voracity of that sentence; do you?</p> <p>15 A I can't answer that. I don't know.</p> <p>16 Q Would you have included it in your</p> <p>17 email if you thought it was false?</p> <p>18 A No. I would not include anything that</p> <p>19 I thought was false, but that doesn't necessarily</p> <p>20 make it true.</p> <p>21 Q What costs were you referring to when</p> <p>22 you said costs would rise?</p> <p>23 A Egg costs.</p> <p>24 Q Your cost of procuring eggs; correct?</p> <p>25 Kroger's cost of procuring eggs?</p>	<p style="text-align: right;">Page 136</p> <p>1 calls. So I really -- I really can't refer to</p> <p>2 that. As I said, I worked for Lisa Beth Miller.</p> <p>3 Q Okay. Let's move on to Exhibit 14</p> <p>4 which bears Bates Nos. MPS-00093359.</p> <p>5 Have you had a chance to review Exhibit</p> <p>6 14?</p> <p>7 A Yes.</p> <p>8 Q What is Exhibit 14?</p> <p>9 A A letter to me from Midwest Poultry.</p> <p>10 It's a copy of our agreement for the increased</p> <p>11 price for certified animal care shell eggs.</p> <p>12 Q What's the date of Exhibit 14?</p> <p>13 A 9-27-02.</p> <p>14 Q Do you have any doubt that you received</p> <p>15 Exhibit 14 on or about September 27, 2002?</p> <p>16 A No.</p> <p>17 Q So does -- Exhibit 14 reflects that</p> <p>18 there was an agreement between Midwest and Kroger</p> <p>19 about a price increase for costs associated with</p> <p>20 the animal care program; correct?</p> <p>21 A We were told there would be a price</p> <p>22 increase.</p> <p>23 Q Okay. Who told you that?</p> <p>24 A Bob Krouse.</p> <p>25 Q So there was no secret to you or to</p>

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1 Kroger that the animal welfare program would
2 bring about an increase in Kroger's cost of
3 purchasing eggs; was there?

4 MR. MURRAY: Object to the form of the
5 question.

6 A We knew there would -- we were informed
7 that there would be price increases.

8 Q Midwest didn't hide that fact from you;
9 did it?

10 A No.

11 Q Did you have similar discussions with
12 other suppliers?

13 A I don't know if I did or not. If you
14 have -- if you have things to put in the record
15 that go to other suppliers, then I could agree to
16 it, but I honestly can't recall if I did this
17 with other suppliers or not.

18 Q Well, did you have an understanding
19 that the animal welfare program brought about an
20 increase in costs to egg -- shell egg producers?

21 A I was informed by Midwest Poultry that
22 they would.

23 Q And would it be fair to say that if
24 Midwest Poultry would experience increased costs
25 as a result of the animal welfare program, that

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1 other suppliers who were also required by Kroger
2 to produce eggs in accordance with those same
3 guidelines would likewise have increased costs?

4 MR. MURRAY: Objection to the form of
5 the question. Calls for speculation.

6 A I'm afraid I have to agree with the
7 speculation clause. I really don't know the -- I
8 don't know because I didn't go out and inspect
9 coops or anything to see what the effects of the
10 requirements were.

11 Q Did you understand from Mr. Krouse why
12 the animal welfare program would cause a price
13 increase for the eggs you were purchasing from
14 Midwest?

15 A My memory is kind of dim, but Bob
16 Krouse was a good supplier, and I pretty much
17 trusted his word.

18 Q Would it make sense to you that if
19 there are fewer -- or if hens require increased
20 space in cages, that that would bring about
21 increased costs --

22 MR. MURRAY: Objection. Calls --

23 Q -- for the producer?

24 MR. MURRAY: Objection. Calls for
25 speculation. Lack of foundation.

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1 A It makes -- it makes sense that less
2 birds in a cage would produce less eggs, but
3 really they produce more.

4 Q Fewer hens in a cage causes an increase
5 in egg production; is that your understanding?

6 A It's possible. That was, I think, the
7 contention.

8 Q Okay. Did you ever inquire of other
9 producers whether the animal welfare program
10 would cause an increase in costs and therefore an
11 increase in price to Kroger?

12 A I can't recall.

13 Q But it was the animal welfare program
14 guidelines that Mr. Krouse explained to you
15 brought about the increase in price from Midwest;
16 correct?

17 A I think that's what's stated in the
18 letter.

19 Q Right. And Kroger required all of its
20 other producers also to comply with those same
21 animal welfare guidelines; correct?

22 A I believe that's what's in Exhibit 3.

23 Q So if Midwest experienced an increase
24 in costs as a result of the animal welfare
25 guidelines, would it make sense that other

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1 producers likewise experienced increased costs as
2 a result of the animal welfare guidelines?

3 MR. MURRAY: Objection. Asked and
4 answered. Calls for speculation.

5 A Would you restate the question?

6 MS. LEVIN: Can you read it back.

7 (The reporter read the requested
8 question.)

9 MR. MURRAY: Objection to the question.
10 Asked and answered, calls for speculation.

11 A No.

12 Q That would not make sense to you?

13 A Not -- not to me.

14 Q Why not?

15 A Each producer has their own set of
16 criteria on how they produce things.

17 Q But you're requiring everyone to follow
18 the animal welfare guidelines; correct?

19 A That's what's stated in this Exhibit 3,
20 yes.

21 Q And it's stated in every last contract
22 we've looked at today too; correct?

23 A Yes.

24 Q And Mr. Krouse is stating to you that
25 the animal welfare guidelines are what are

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1 causing an increase in his costs, and that it's
 2 therefore going to create a price increase for
 3 Kroger; correct?
 4 A That's what the letter says.
 5 Q What is the basis for your view that it
 6 may be that those same animal welfare guidelines
 7 that cause an increase in price for Midwest would
 8 not cause an increase in price for Rose Acre
 9 foods, Cal-Maine, NuCal, and the other producer
 10 contracts that we've looked at?
 11 MR. MURRAY: Objection. Asked and
 12 answered.
 13 A You know, it would be speculation for
 14 me to tell you that. But let me just do a quick
 15 example. If I'm driving a car and I get ten
 16 miles to the gallon where somebody else is
 17 driving a car and gets 20 miles to the gallon,
 18 we're both driving cars but one does a better job
 19 than the other.
 20 Q Correct. And if you have those two
 21 cars -- let's go with that -- one getting
 22 10 miles to the gallon and the other getting
 23 20 miles to the gallon and both of those drivers
 24 are required to put a thousand pounds in the
 25 trunk, would you expect that to have a decrease

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1 in mileage for each of those cars?
 2 MR. MURRAY: Objection. Calls for
 3 speculation, lack of foundation.
 4 A We are getting into a pretty
 5 speculative area.
 6 Q I'm trying to use your analogy, Mr. --
 7 A I understand.
 8 Q -- Mr. Stull, you're the one who raised
 9 it; not me.
 10 A Okay. It depends if you're going
 11 uphill or downhill, doesn't it?
 12 Q Everybody's driving on the same, flat
 13 level surface.
 14 MR. MURRAY: Same objection.
 15 A I'd be truly speculating if I said you
 16 could do that.
 17 Q Okay. Let's take a look at the second
 18 page of Exhibit 14. These are the -- what's
 19 titled Certified Animal Care Production Cost
 20 Product -- Projections. Do you see that?
 21 A Yes, I do.
 22 THE REPORTER: "It's titled" --
 23 MS. LEVIN: Certified Animal Care
 24 Production Cost Projections.
 25 Q Can you explain the second page of

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1 Exhibit 14 for us?
 2 A These are costs per dozen that Midwest
 3 Poultry put together and sent to me.
 4 Q Do you have a recollection that the
 5 cage space requirements of the animal welfare
 6 guidelines were to be phased in? That is to say
 7 they were not to go from 48 inches per --
 8 48 inches per hen to 67 inches overnight but were
 9 to be stepped up gradually?
 10 A That's the assumption that's made in
 11 this pricing.
 12 Q Okay.
 13 A I'd like to add that these -- these
 14 things were in place before I talked with
 15 Mr. Krouse.
 16 Q What things were in place before you
 17 talked with Mr. Krouse?
 18 A These -- this planned phase-in.
 19 Q Do you know when the animal welfare
 20 guidelines were first promulgated by UEP?
 21 A No, I don't know.
 22 Q So how can you say it was in place
 23 before you spoke with Mr. Krouse as reflected in
 24 Exhibit 14?
 25 MR. MURRAY: Objection to the form of

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1 the question.
 2 A You know, I can't recall the specifics.
 3 It's just an assumption that I made.
 4 Q Okay. Well, Mr. Stull, we're not here
 5 to get assumptions today.
 6 A I understand.
 7 Q We're here to get facts that you
 8 recall, and that's why we're looking at documents
 9 to try to refresh your recollection. Does this
 10 document refresh your recollection that there
 11 were a phase-in of the cage space requirements of
 12 the animal welfare program?
 13 A I see it in black and white across the
 14 top of this paper.
 15 Q I'm sorry. The cage space requirements
 16 were going to go from 48 inches to 56, to 59, to
 17 61, to 64, and then to 67; is that correct?
 18 A That's correct as it's printed.
 19 Q And Mr. Krouse was explaining to you
 20 that the costs for production would increase as
 21 the cage space requirements increased; correct?
 22 A Yes.
 23 Q And those same cage space requirements
 24 were required of all of your producers; correct?
 25 Your shell egg producers?

<p style="text-align: right;">Page 145</p> <p>1 MR. MURRAY: Objection. Form of the 2 question. 3 A I'll refer you back to Document 3. 4 Q And what part of Document 3, Exhibit 3, 5 are you referring us to? 6 A The third paragraph. 7 Q Where in the third paragraph are you 8 referring? 9 A Where it talks about increased cage 10 space per hen. 11 Q Right. And if we would go back to the 12 contracts that we've reviewed, each of them has 13 required your producers -- your shell egg 14 producers -- to comply 100 percent with those 15 guidelines; correct? 16 A I believe, yes, that's correct. 17 Q Okay. And then you negotiated with 18 Mr. Krouse how much Kroger would pay for the 19 increased costs of production for eggs produced 20 in accordance with the animal welfare program? 21 A Define "negotiated." 22 Q As in the first page of Exhibit 14 23 says, "Attached is a copy of our agreed-upon 24 price increase." Was that a product of a 25 negotiation?</p>	<p style="text-align: right;">Page 147</p> <p>1 A And when we're talking about the 2 cage -- the animal welfare stuff, I had no way of 3 determining that. 4 Q But you agreed upon those numbers with 5 Mr. Krouse? 6 A I had confidence in his honesty. 7 Q Okay. Let's take a look -- do you have 8 any reason to doubt whether those costs were in 9 fact incurred by -- by Midwest in conjunction 10 with its compliance with the animal welfare 11 guidelines? 12 MR. MURRAY: Objection. Lack of 13 foundation. 14 A That would be -- I mean, I had no way 15 of telling. It would be speculation for me to 16 say "yes" or "no." 17 Q But you have no reason sitting here 18 today to question that; do you? 19 MR. MURRAY: Objection. 20 Mischaracterizes his testimony. 21 A Today? No. I have no -- nothing 22 today. I've been retired for eight years. I'm 23 not -- you know, I'm not involved in it. So -- 24 Q I know you -- 25 A -- I have no objection.</p>
<p style="text-align: right;">Page 146</p> <p>1 A I was -- that price increase of .0075 2 for the tenth period, those are numbers that I 3 was told would be the price increase. 4 Q But you understood that those numbers 5 would be a price increase and that they were 6 engendered by the animal welfare program, 7 compliance with the cage space requirements; 8 correct? 9 A I had no way of verifying those 10 numbers. 11 Q Well, I understand you had no way of 12 verifying those numbers, but you agreed with 13 Mr. Krouse to permit that additional charge to be 14 made to Kroger; correct? 15 A Yes. That's correct. 16 Q Did you do anything to try to determine 17 whether that was a fair price increase? 18 A No. 19 Q Did you review the numbers on the 20 exhibit, on the second page of Exhibit 14, to 21 determine whether those numbers were accurate or 22 fair? 23 A I had no way of determining whether 24 they were active -- accurate or fair. 25 Q But you --</p>	<p style="text-align: right;">Page 148</p> <p>1 Q At the time you took no steps to 2 ascertain whether these numbers were in fact -- 3 correctly illustrated the increased costs to 4 Midwest as a result of compliance with the animal 5 welfare guidelines? 6 A Correct. 7 Q And you took no steps to ascertain 8 whether any of your other producers incurred 9 increased costs for compliance with the animal 10 welfare guidelines? 11 A I can't recall with anyone else. 12 Q Was there anybody else at Kroger who 13 would have been in charge of ascertaining whether 14 it was correct or fair to be paying more for eggs 15 as a result of compliance with the animal welfare 16 guidelines? 17 MR. MURRAY: Object to the form of the 18 question. 19 A I can't speak for anyone else at 20 Kroger. 21 Q Was there anyone else you had to 22 consult with before signing a contract with an 23 egg supplier on -- did you make that decision 24 whether to sign those contracts? 25 A I honestly can't recall.</p>

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1 Q Were you the one who decided whether
2 the price -- were you the one who decided to whom
3 to award a contract as a result of the bidding
4 process?
5 A Yes.
6 Q And did you have to consult with anyone
7 about that award?
8 A Only in certain circumstances.
9 Q What circumstances?
10 A They had to meet -- for instance, when
11 we talked about Exhibit -- the GNX bid.
12 Q The RFP in Exhibit 6?
13 A Yes. The Global Net Xchange bid.
14 Q Right.
15 A That was -- that was a test, and yes, I
16 did have to consult with other people.
17 Q Did you have to consult with anybody
18 about the pricing in any of the contracts for
19 procurement of shell eggs?
20 A No.
21 Q Let's look at Exhibit 15. And it is a
22 document bearing Bates Nos. MPS-00092027 through
23 927034. And I can tell you, Mr. Stull, that all
24 of my questions are going to be devoted to the
25 first page.

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1 A Okay. So I just need to familiarize
2 myself with the first page?
3 Q I think that will do it. I'm not going
4 to ask you to explain the detailed numbers and
5 charts.
6 A That's very good because I probably
7 couldn't do it at this point.
8 Q What is Exhibit 15?
9 A What is Exhibit --
10 Q What is Exhibit 15?
11 A What is it? It's a letter to me from
12 Robert Krouse regarding our agreement to lock in
13 the corn and soybean meal components of the shell
14 egg program.
15 Q And the date is April 4th, 2003?
16 A I'm looking for it.
17 Q At the top.
18 A Yes.
19 Q Do you have any doubt that you received
20 a copy of Exhibit 15 on or about April 4, 2003?
21 A No.
22 Q Okay. Let's take a look at the first
23 two sentences of the second paragraph. Could you
24 read those for us, please?
25 A "As you can see, the cap price is

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1 \$0.7119 per dozen for large eggs. This price is
2 based on the average Certified Animal Care cost
3 over the time period involved. The actual" --
4 Q That's enough there. So again, as of
5 April 4th, 2003, you understood that Midwest
6 Poultry incurred costs as a result of compliance
7 with the animal welfare guidelines; correct?
8 MR. MURRAY: Object to the form of the
9 question.
10 A This was -- this was talking about corn
11 and soybean meal components for shell eggs.
12 Q Well, I understand that that's part of
13 what the document's talking about, but then the
14 sentence that you just read makes reference to
15 the certified animal care cost. And my question
16 to you is whether, as a result of your review of
17 this document, you understand that Midwest
18 communicated to you that its price would be
19 higher as a result of the costs it incurred by
20 complying with the animal welfare guidelines?
21 MR. MURRAY: Object to the form of the
22 question and mischaracterizes the document.
23 A All I can say is you can read whatever
24 you want into this, but as I -- as I read it,
25 it's just -- it's an agreement to lock in corn

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1 and soybean prices. Anything else is secondary.
2 Q Well, secondary, but you did understand
3 that there was a price cap -- correct? -- per
4 dozen for large eggs?
5 A Yes.
6 Q And that that price included a charge
7 for compliance with the animal welfare
8 guidelines; correct?
9 MR. MURRAY: Object to the form of the
10 question. Mischaracterizes the document.
11 A I'm going to have to say I really don't
12 know, because I don't know how -- you'd have to
13 look at the breakdown to see what the costs are.
14 Q Well, since you're having difficulty,
15 let's turn to page 92031 of the document. Does
16 that help you at all?
17 A What page are we talking about? 92031?
18 Okay.
19 Q Correct. Does that help you at all
20 with answering my question?
21 A That page supports that price that's
22 stated on the first page.
23 Q And it breaks out a component for
24 animal care cost; correct?
25 A That's correct.

<p style="text-align: right;">Page 153</p> <p>1 Q And that was for compliance with the 2 animal welfare guidelines that was a requirement 3 contained in your contract with Midwest? 4 A I'm not an accountant, so I can't 5 really say if that was what's there. But on the 6 first page it says it's in that price. 7 Q Do you have any reason to doubt the 8 voracity of that statement on the first page? 9 A As I said, Mr. Krouse and I had a good 10 arrangement. I trusted him. As far as the 11 voracity of it, I had no way of confirming or 12 denying it other than my trust in Mr. Krouse. 13 Q But you understood that Midwest was 14 including in its price a component for compliance 15 with the animal welfare guidelines; correct? 16 MR. MURRAY: Object to the form of the 17 question. 18 A That's -- that's what this letter says. 19 Q Okay. Let's move on to Exhibit 16. 20 And it is a document bearing Bates Nos. 21 MPS-00093368 through 93369. 22 And again, Mr. Stull, my objections 23 [sic] will really just focus on the first page. 24 A Okay. 25 MR. MURRAY: It's what she said.</p>	<p style="text-align: right;">Page 155</p> <p>1 to include the additional costs, whatever they 2 may be, of the animal welfare program in 3 Midwest's price to Kroger? 4 A That's what the letter says. 5 Q Do you have any reason to doubt the 6 accuracy of the letter from Mr. Krouse to you on 7 this particular point? 8 A You know, it would be speculation for 9 me to say at this point do I have any question -- 10 or any doubt. As I said before, I had high 11 regard for Mr. Krouse and respected his opinion. 12 Q Well, we've now reviewed Exhibits 14, 13 15, and 16, all of which make reference to 14 additional costs from the animal welfare program. 15 And my question to you is, it was no secret to 16 Kroger, was it, that Midwest's costs increased as 17 a result of compliance with the animal welfare 18 program and that those costs were being passed on 19 to Kroger? 20 MR. MURRAY: Object to the form of the 21 question. Mischaracterizes the document and 22 misstates his prior testimony. 23 A I can only refer to the letter. 24 Q Okay. And the letter, as far as you 25 know, is accurate; correct? Exhibit 16?</p>
<p style="text-align: right;">Page 154</p> <p>1 THE WITNESS: Yes. 2 Q What is Exhibit 16? 3 A It's a letter to me from Bob Krouse at 4 Midwest Poultry Services. 5 Q And what's the date of Exhibit 16? 6 A February 2nd, 2004. 7 Q Do you have any doubt that you received 8 Exhibit 16 on or about February 2nd, 2004? 9 A No. 10 Q Let's take a look at the second 11 paragraph. It states in the second sentence, 12 "Since we agreed to include the additional costs 13 of the animal welfare program, which average 14 .0291 in 2004, would it be simplest to make the 15 contract price .0759 back for this year?" Do you 16 see that? 17 A Yes, I do. 18 Q Does that refresh your recollection 19 that you agreed with Mr. Krouse to include the 20 additional costs of the animal welfare program in 21 Midwest's price to Kroger? 22 A I can't verify any of the numbers. 23 Q I understand that. I'm not asking you 24 about the specific numbers, I'm asking whether 25 this refreshes your recollection that you agreed</p>	<p style="text-align: right;">Page 156</p> <p>1 A As far as I can recall. 2 Q Okay. That's all we're asking. 3 Let's move on to Exhibit 17 which will 4 be a document bearing Bates No. MOARK-IPP-0004913 5 through 4915. 6 (Deposition Exhibit 17 was marked for 7 identification.) 8 MS. LEVIN: It appears to have an extra 9 page attached to it. 10 Q And my questions about Exhibit 19 are 11 going to focus on the second page at the bottom, 12 Ralph's/Food 4 Less Bid. 13 THEREPORTER: Exhibit 19 or 17? 14 MS. LEVIN: Oh. 17? 15 THE REPORTER: Yes. 16 MS. LEVIN: Okay. Got carried away. 17 Q Have you had a chance to review that 18 paragraph? 19 A Yes, I did. 20 Q What is Exhibit 17? 21 A It's a letter to Arnie Sumner and MOARK 22 from Craig Willardson. 23 Q Do you know who Craig Willardson was? 24 A I don't know what his position -- his 25 title was, but he was the -- like the plant</p>

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1 manager at the egg plant. I'm sure he had a
 2 bigger title than that, but that's all I knew.
 3 Q Did you have dealings with him with
 4 respect to egg procurement?
 5 A Minimal contact, but yes.
 6 Q Okay. On the paragraph that I asked
 7 that you look at on the bottom of the second page
 8 of Exhibit 17, that makes a reference to "Mark
 9 and I met with Gary Stull." Do you see that in
 10 the third line?
 11 A Yes, I do.
 12 Q Do you know who Mark was?
 13 A I honestly can't recall who Mark was.
 14 Q No last name or what he might have
 15 done?
 16 A Huh-uh.
 17 Q Okay. And then at the bottom of that
 18 page it says, "Ralph's is looking for a lower
 19 price and no ACC charge." Do you see that
 20 sentence?
 21 A Yes. I see that sentence.
 22 Q Do you know what an ACC charge was?
 23 A No idea.
 24 Q Does it sound like it might have been
 25 the animal care certified charge that we've seen

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1 references to in Exhibits 15 and 14 and 13?
 2 MR. MURRAY: Objection. Asked and
 3 answered, calls for speculation.
 4 A (No response)
 5 Q Do you have a recollection of
 6 attempting with MOARK to obtain eggs without
 7 having to pay the increased --
 8 A I don't -- I don't have any
 9 recollection. Sorry.
 10 Q For animal -- well --
 11 MS. LEVIN: Could you go back and tell
 12 me how far I got with that question.
 13 THE REPORTER: Sure.
 14 THE WITNESS: I apologize for the
 15 interruption.
 16 MS. LEVIN: It's okay.
 17 (The reporter read the requested
 18 question.)
 19 Q -- charge for the animal welfare
 20 program on behalf of Ralph's?
 21 A No, I have no recollection.
 22 MS. LEVIN: I would like to mark as
 23 Exhibit 18 a document bearing Bates Nos.
 24 MOARK000o1 -- 0001462 through 63.
 25 (Deposition Exhibit 18 was marked for

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1 identification.)
 2 Q And I'm not interested in the first
 3 paragraph about King Sooper, but I will have some
 4 questions about the other paragraphs.
 5 Have you had a chance to review Exhibit
 6 18?
 7 A Yes.
 8 Q And what is Exhibit 18?
 9 A It's a letter to me from Bob Hodges
 10 regarding discussion items in Atlanta.
 11 Q What's the date of Exhibit 18?
 12 A January 26th, 2004.
 13 Q Do you have any doubt about whether you
 14 received a copy of Exhibit 18 on or about
 15 January 26, 2004?
 16 A I have no specific recollection of it,
 17 but I have no doubt that it came to me.
 18 Q And who is Bob Hodges?
 19 A I honestly can't remember who Bob
 20 Hodges is.
 21 Q Let's look at the third bullet point
 22 under animal care certification. Do you see
 23 that?
 24 A Yes.
 25 Q Could you read that for us, please?

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1 A "ACC Phase 2 begins the first of
 2 February 2004, and we anticipate a cost of
 3 \$0.0100 per dozen for the cage space changes in
 4 this phase and would like to ask -- establish the
 5 new cost for the ACC program for King's, Smith's,
 6 and Ralph's as soon as possible."
 7 Q So MOARK also communicated to you that
 8 the requirement of compliance with the animal
 9 welfare guidelines would result in an increased
 10 cost because of the cage space changes; is that
 11 correct?
 12 MR. MURRAY: Objection.
 13 Mischaracterizes the document.
 14 A I can go with -- only refer to what it
 15 says in the document.
 16 Q Well, is that a fair characterization
 17 of what it says in the document and what he was
 18 communicating to you?
 19 MR. MURRAY: Same objection.
 20 A It says we anticipate a cost of a cent
 21 per dozen for the cage space changes.
 22 Q So Kroger understood that MOARK, like
 23 Midwest, was going to increase -- was going to
 24 experience a cost increase as a result of
 25 implementation of the cage space requirements of

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1 the animal welfare program; correct?
 2 MR. MURRAY: Objection. Misstates --
 3 misstates the document, calls for speculation.
 4 A The only thing I would like to point
 5 out there is that Midwest's price was three
 6 quarters of a cent and this is one cent. It's
 7 kind of like the cars.
 8 Q Okay. But it was a cost increase;
 9 correct?
 10 A That's what it says, yes.
 11 Q Okay. And MOARK wanted to establish a
 12 new price to Kroger for the shell eggs that were
 13 being sold for King's, Smith's, and Ralph's as
 14 soon as possible? Is that correct?
 15 A That's what's stated in the letter.
 16 MR. MURRAY: We've been going over an
 17 hour and ten minutes or so.
 18 MS. LEVIN: This is good because I was
 19 just about to move to another subject.
 20 MR. MURRAY: Okay.
 21 THE VIDEOGRAPHER: We are going off the
 22 record. The time is 2:28 p.m.
 23 (A recess was taken.)
 24 THE VIDEOGRAPHER: This is the
 25 beginning of Tape 4. The time is 2:40 p.m., and

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1 we are back on the record.
 2 Q Mr. Stull, I'm going to switch now a
 3 bit to pricing of eggs, and my first question is
 4 whether during the time that you were the general
 5 manager of egg procurement you kept track in any
 6 way of the market prices for shell eggs?
 7 A The Urner Barry report was very, very
 8 readily available, and yes, I did -- I did follow
 9 the Urner Barry.
 10 Q So you followed the Urner Barry report?
 11 Do you have any recollection as to what
 12 affects the price of eggs?
 13 A The recollection I have, I think -- I
 14 think that letter from Mr. Krouse had it layed
 15 out pretty well on what the costs were that
 16 affected the shell egg price.
 17 Q The costs in terms of the feed costs?
 18 A For the producer.
 19 Q Right. What about in terms of other
 20 types of costs? Is there a seasonality to the
 21 cost of eggs?
 22 A It's a true commodity, shell eggs are,
 23 and it's a market-driven supply/demand thing. At
 24 certain times of the year, Easter, Christmas,
 25 Thanksgiving -- we as a society cook three times

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1 a year. Most other times we don't cook. And so
 2 it's -- at those three times of the year, there
 3 is a seasonal demand for eggs.
 4 Q And did that affect the price of eggs
 5 that you recall?
 6 A Oh, yes.
 7 Q How did it affect them?
 8 A As a truly price-driven commodity, the
 9 higher the demand on a static supply, the higher
 10 the price.
 11 Q But that depends upon it being a static
 12 supply; correct?
 13 A Correct.
 14 Q If there's an increase in production
 15 during those times to account for the increased
 16 supply, that would lessen the effect on the
 17 price; correct?
 18 A If there were increased production,
 19 that would.
 20 Q Are there other types of things that
 21 affect the cost of eggs such as dietary trends,
 22 for example?
 23 A Yes. Atkins diet was one that affected
 24 it, and some other. Some other things like that
 25 affected the consumption.

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1 Q How did the Atkins diet affect the cost
 2 of procuring eggs?
 3 A I'm not real sure. I -- I never
 4 subscribed to the Atkins diet, so I really don't
 5 know exactly. But anything that came along like
 6 that that was trendy or, by the same token, the
 7 negative things could affect it. If it came out
 8 in the news that there was salmonella in shell
 9 eggs (indicating) the demand --
 10 Q Down goes the demand?
 11 A Down goes the demand.
 12 Q And down goes the price?
 13 A Price follows demand.
 14 Q And what about, for example, some sort
 15 of weather-related problem? Excessive heat,
 16 excessive drought, would that affect the price?
 17 A Yes, but it would have to be a
 18 long-term thing. I mean you get big snow storms
 19 and people run to the store and buy three items:
 20 Bread, milk, and eggs.
 21 Q We're all eating French toast during
 22 the snow; aren't we?
 23 A And I'm not sure what egg -- people do
 24 with them after they have them.
 25 Q Right.

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1 A They don't wait until Thanksgiving.
 2 Q Okay. Is there anything else you can
 3 think of that would affect the cost of procuring
 4 eggs?
 5 A Umm --
 6 Q What about fuel costs?
 7 A Yes. I'm sure that does. It wasn't
 8 much of an issue when I was still procuring
 9 because we really hadn't hit the pricing that we
 10 have now with fuel. I know as a consumer when I
 11 go to the pump and pay 3.75 a gallon, it affects
 12 me.
 13 Q It hurts, doesn't it?
 14 A It does.
 15 Q Was transportation costs included in
 16 the prices that you negotiated for shell eggs?
 17 A Yes.
 18 Q So there was not a separate charge
 19 added on for transportation, as you recall?
 20 A Not per se, but there was some -- some
 21 adjustments made when the fuel costs started
 22 soaring.
 23 Q Like a fuel surcharge maybe?
 24 A Correct.
 25 Q Okay. Let's go back to Exhibit 7,

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1 which is the Rose Acre Farms contract. And I
 2 wanted to focus your attention on the pricing
 3 aspects of this, which we sort of skipped over
 4 the first time.
 5 So you've mentioned the Urner Barry a
 6 couple times. Can you explain what Urner Barry
 7 is?
 8 A Urner Barry is just a standard that
 9 everyone in the egg industry uses as a basis for
 10 pricing.
 11 Q And do you know how Urner Barry is
 12 calculated?
 13 A I'm not sure if it's witchcraft or --
 14 but they put out a price that says this is the
 15 price that Urner Barry says eggs are worth right
 16 now, and then you use that as a basis to buy.
 17 Q And the price is per dozen; correct?
 18 A Yes.
 19 Q And is it based on egg size, different
 20 Urner Barry for different sizes of eggs?
 21 A They have different price quotes for
 22 each different size.
 23 Q Okay. And do they also have different
 24 price quotes for different regions of the
 25 country?

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1 A I believe so.
 2 Q Okay. Let's take a look at Exhibit 7
 3 here, and it focuses on the Midwest. If you look
 4 down under carton eggs, Grade A jumbo it talks
 5 about the midwest Urner Barry large market.
 6 A Correct.
 7 Q So that would be whatever Urner Barry
 8 has attached to the market for large eggs in
 9 whatever the midwest might be?
 10 A Correct.
 11 Q Correct? And the large market number
 12 appears to be used for both large and extra large
 13 and jumbo. Is that correct?
 14 A Yes.
 15 Q And then there's a different Urner
 16 Barry number for the medium eggs; correct?
 17 A Correct.
 18 Q And a different Urner Barry number for
 19 small eggs; correct?
 20 A Correct.
 21 Q And then there is a Grade A large brown
 22 that is the Urner Barry large market again. Do
 23 you see that?
 24 A Yes.
 25 Q Was there a separate number for brown

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1 eggs versus white eggs?
 2 A You mean a separate price?
 3 Q A separate Urner Barry number.
 4 A I'm not sure if there was or not.
 5 There may have been. We based everything off
 6 the -- either the large, medium, or small market.
 7 Q Okay. And it says -- if you'll see the
 8 last sentence before the table, it says all Urner
 9 Barry quotes are based on a white egg --
 10 A Correct.
 11 Q -- correct? So at least with Mid- --
 12 at least with Rose Acre, you used the white egg
 13 large market for brown eggs for your pricing?
 14 A Correct.
 15 Q Now, for the Grade A jumbo it has
 16 plus .0077. Can you explain to me what that
 17 means in terms of the price for Grade A jumbo
 18 eggs?
 19 A Yes. Whatever the large market was on
 20 the particular pricing day, it would be that
 21 large market plus .0077.
 22 Q Okay. And what about for Grade A extra
 23 large? That looks like the number's different.
 24 A That would be whatever the midwest
 25 Urner Barry large market was minus -- you know,

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1 less this amount.
 2 Q Less .0785?
 3 A For the extra large, yes.
 4 Q Okay. Is that what's referred to as a
 5 number being back of Urner Barry?
 6 A Yes, it is.
 7 Q Is there a similar phrase for ones that
 8 are larger than Urner Barry?
 9 A Over, I guess.
 10 Q Over or front or anything? You don't
 11 know?
 12 A No.
 13 Q So do you recall what other regions
 14 besides Midwest there were for the Urner Barry?
 15 A There -- I can't remember. I know
 16 there were other regions, but I based everything
 17 off the Midwest.
 18 Q Okay. Well, for Rose Acre?
 19 A For Rose Acre.
 20 Q If you want to take a quick look at
 21 Exhibit 10, which is the Cal-Maine contract, it
 22 makes reference to the south central Urner Barry
 23 market.
 24 A Yes. And like I say, I know there are
 25 other markets, but I couldn't tell you exactly.

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1 Q So you remember the south central, and
 2 then in Exhibit 11, the NuCal contract, it's
 3 typed in midwest, but it's been marked through
 4 and it says California Urner Barry large market.
 5 A That occurred after my -- after I'd
 6 left.
 7 Q Right. Do you have a recollection of
 8 there being any markets besides midwest and south
 9 central?
 10 A No, I can't recall.
 11 Q And do you know whether the Urner Barry
 12 prices in -- or the Urner Barry number for
 13 midwest large market, when it moved, always moved
 14 in the same direction as the south central
 15 number? So, for example, if the midwest Urner
 16 Barry large market went up, did the south central
 17 Urner Barry large market also go up?
 18 A Not necessarily.
 19 Q So sometimes those went in different
 20 directions?
 21 A Right.
 22 Q Let's take a look at the second page of
 23 Exhibit 7. There's a reference to the trailing
 24 market average. Can you explain what that means?
 25 A (No response)

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1 Q It's under Roman numeral III.
 2 A Oh, okay. You know, I can tell you
 3 exactly what it says here in this -- if you ask
 4 me -- if you ask me what it is now, I couldn't
 5 tell you without some help.
 6 Q Does this refresh your recollection at
 7 all?
 8 A It does. It's the -- it's a
 9 four-week -- they take the Thursday market for
 10 all four weeks and average it.
 11 Q So did the Urner Barry number change
 12 weekly?
 13 A It changed daily.
 14 Q It changed daily. And so the trailing
 15 market average looked at the Thursday number for
 16 four weeks, averaged it, and then applied it to
 17 the sales for the coming week?
 18 A Correct.
 19 Q And so the price for eggs got
 20 recalculated on a weekly basis -- is that
 21 correct? -- under this contract?
 22 A Well, it got recalculated off a
 23 four-week average.
 24 Q Right.
 25 A But that changed, you know, every four

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1 weeks, so --
 2 Q So you only did this recalculation
 3 every four weeks?
 4 A (No response)
 5 Q I'm just trying to figure out how often
 6 the price changed.
 7 A Okay. This is terrible for me to say
 8 because I did this for many years, but I can't
 9 really recall if it was a --
 10 Q Well, in this --
 11 A Originally it was set to change every
 12 week.
 13 Q Right.
 14 A But with the trailing average, I think
 15 we went to a once-a-month pricing.
 16 Q It does say this average market will be
 17 fixed for the following four-week Kroger period.
 18 So your recollection is that the price that
 19 Kroger paid to Rose Acre Farms, or any other
 20 contract that has this provision in it, was reset
 21 every four weeks, it was based on whatever
 22 appropriate Urner Barry market number is
 23 referenced in the contract, and you looked at the
 24 Urner Barry price for the prior four Thursdays
 25 and averaged it?

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1 A Correct.
 2 Q Okay. Do you recall there ever being a
 3 previous Thursday approach used?
 4 A Previous Thursday?
 5 Q Right.
 6 A I don't recall that, no.
 7 Q Okay. There's some documents that we
 8 can take a look and see if that helps you at all.
 9 And you said before that the price that
 10 was paid to Rose Acre, the price that Rose Acre
 11 bid, was to include packaging costs for the
 12 purchase of packaging from Kroger; correct?
 13 A Correct.
 14 Q So this number for Grade A jumbo, .0077
 15 ahead or above the Urner Barry large market,
 16 included in it some cost -- I guess it's jumbo
 17 eggs, so it would have included \$79 per thousand
 18 cartons for jumbo eggs?
 19 A Correct. The cost of the cartons and
 20 shipping containers. All shipping containers
 21 were included in this quote.
 22 Q Okay. And the eggs are to be priced
 23 FOB. What does that mean?
 24 A Delivered to the Kroger warehouse.
 25 Q Okay. Was transportation cost to be

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1 included in the prices set forth in this
 2 contract?
 3 A Yes.
 4 Q Were there any discounts that were
 5 applied for sales under a contract such as
 6 Exhibit 7?
 7 A You mean by the supplier to Kroger?
 8 Q A prompt payment discount, for
 9 instance?
 10 A I think -- I think it was stated in --
 11 I know in reading the contracts there was
 12 something about a prompt payment had a quarter of
 13 a cent or something like that. Not -- and not
 14 apparently on this particular contract.
 15 Q Well, it says terms net 20 days from
 16 receipt of invoice. What does that mean?
 17 A It means we would pay within 20 days
 18 from receiving the invoice.
 19 Q Okay. And there's -- I don't see
 20 anything in this contract -- perhaps you do --
 21 that would say there's any kind of prompt payment
 22 discount or anything of that sort. Do you?
 23 A I didn't see it on this one, no.
 24 Q But you think there may have been
 25 contracts that had that?

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1 A I think some of the ones we looked at
 2 previously had that.
 3 Q Let's take a look at Exhibit 11, which
 4 is the NuCal contract. If you'll look at -- you
 5 got it?
 6 A Yes, I do.
 7 Q Paragraph 4 of Exhibit 11.
 8 A Mm-hmm.
 9 Q It makes reference to terms, 2 percent
 10 10, net 45 days from receipt of goods. Do you
 11 see that?
 12 A Yes, I do.
 13 Q Can you explain what that means in
 14 terms of pricing?
 15 A We would get 2 percent if we paid
 16 within 10 days, and the net was due in 45 days.
 17 Q So that was an -- what I would call an
 18 off invoice discount?
 19 A Yes.
 20 Q In other words, if you would have
 21 billed -- if you were billed a hundred dollars,
 22 the invoice would say a hundred dollars, but if
 23 you paid it promptly you could -- within ten days
 24 you could pay only \$98?
 25 A Yes.

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1 Q That's how that works; correct?
 2 A Yes, it is. Sorry about the head bob,
 3 I just get out of the habit here.
 4 Q Let's take a look at Exhibit 12.
 5 That's the Midwest contract.
 6 A I'm going to have to search a little
 7 bit because I don't have them in -- somehow
 8 they're not in order.
 9 Q It's the Midwest contract if that helps
 10 you locate it.
 11 MR. MURRAY: Here it is.
 12 THE WITNESS: Oh, I had it sitting over
 13 there.
 14 MR. MURRAY: It was sitting over there.
 15 You wouldn't have found it in the pile.
 16 A Okay. Yes, I have it.
 17 Q Okay. The Midwest contract says that
 18 Kroger will be going to a cost plus program. Can
 19 you explain what a cost plus program is?
 20 A It's -- it's a fixed price. It's -- if
 21 you look at -- I think in the back here there's
 22 an example.
 23 Q Well, let's just -- yeah, we'll get to
 24 that.
 25 A Okay.

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1 Q But -- and you'll be able to explain
2 what A and B are. I think I know, but may not be
3 a hundred percent sure. But can you just give us
4 a general idea of what a cost plus program is?

5 A Sure. Midwest would tell me what their
6 cost was, their bare cost, and we would agree to
7 some plus to that cost.

8 Q Okay. And was it your recollection
9 that as of February 1, 2004, all of the eggs that
10 Kroger purchased from Midwest, until the time you
11 retired, obviously, were on a cost plus program?

12 A Yes.

13 Q Did you use a cost plus pricing method
14 with any other supplier besides Midwest?

15 A You know, I can't recall if it ever got
16 in place, but if you -- if you look at that
17 NuCal -- the Monarch bid --

18 Q MOARK?

19 A -- the one for the West Coast.

20 Q Oh. NuCal.

21 A NuCal? It talked about looking at a
22 cost plus program. I can't recall right now if
23 we ever put it in place or not.

24 Q Okay. Because Exhibit 11 does have an
25 Urner Barry-based pricing mechanism in it under

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1 paragraph 2; correct?

2 A Correct. I think there was resistance.

3 Q But you think there's a reference in
4 Exhibit 11 somewhere to switching to a cost plus
5 program?

6 A Exploring it. I thought I read that.

7 Q I'm not seeing any reference to that.
8 And I just would like to understand whether
9 that's something you're recalling independently.

10 A I was -- I think if you look at
11 Exhibit 6.

12 Q Okay.

13 A I thought I saw in my reading there
14 that --

15 Maybe I just imagined it. It's
16 possible.

17 Q But you think it's possible that with
18 NuCal there was consideration?

19 A I think it might have been proposed,
20 but I'm not positive. I just thought I read it
21 today in one of these documents.

22 Q Okay. So other than the possibility of
23 NuCal, do you recall any other egg suppliers that
24 you discussed the possibility of a cost plus
25 program with?

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1 A No.

2 Q Now we'll get to the cost plus, but I
3 wanted to explore just a little bit at the top of
4 page 2 where it says that "If Midwest should
5 supply other divisions, the following pricing
6 should apply," and it's another Urner Barry-based
7 mechanism.

8 A Yes.

9 Q What does it mean if Midwest Poultry
10 should supply other divisions?

11 A For example, if the supplier that was
12 supplying Atlanta couldn't meet a seasonal
13 demand --

14 Q Right.

15 A -- or some type of demand and I had to
16 find eggs somewhere, I would take them from
17 Midwest Poultry to Atlanta.

18 Q Right. And --

19 A But that was -- that was on a spot
20 basis.

21 Q Right.

22 A And so this pricing was put into place
23 to cover those spot shipments.

24 Q So rather than using a cost plus
25 methodology for those shipments, you used an

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1 Urner Barry-based approach; correct?

2 A Correct.

3 Q And that would be for any shipment by
4 Midwest to a location other than the five
5 warehouses shown on the first page of Exhibit 12?

6 A Yes.

7 Q In Exhibit -- in Roman numeral III, it
8 appears that brown eggs were also billed based on
9 an Urner Barry-based price; is that correct?

10 A That's correct.

11 Q And underneath the reference to the
12 Urner brownie -- Urner Barry brown egg --
13 MS. LEVIN: I want a brownie. That's
14 my little after-lunch problem.

15 Q -- it makes a reference to a pick-up
16 allowance. What is that?

17 A That would be if Kroger -- well, at
18 that time Kroger fleet swung by and picked up the
19 eggs instead of having them delivered --

20 Q Then --

21 A -- then there would be --

22 Q -- Kroger would -- go ahead.

23 A -- then Kroger would get a pickup
24 allowance from Midwest Poultry.

25 Q So it would get a 1.3-cent-per-dozen

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1 discount?
 2 A Yes.
 3 Q Now, there is a reference on the first
 4 page of Exhibit 12 to Attachments A and
 5 Attachment B. And it appears to me -- well, why
 6 don't you tell us what the difference is in
 7 Attachment A and Attachment B.
 8 A Understand you're asking me to go back
 9 into an old memory bank.
 10 Q Well, again, it says Attachment A shows
 11 how the formula for the cost plus pricing is
 12 derived.
 13 A Okay.
 14 Q And Exhibit B reflects the cost sheet
 15 Midwest Poultry will send each month for the cost
 16 change. So --
 17 A Okay.
 18 Q -- let's look at A.
 19 A A is the general format.
 20 Q Right.
 21 A And B is the specific one. Where on A
 22 they refer to feed cost per pound and then they
 23 have some examples --
 24 Q Mm-hmm.
 25 A -- on B it's the actual feed cost per

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1 dozen -- per pound.
 2 Q Okay. And how frequently was the cost
 3 plus price determined?
 4 A I'm going to have to look at the
 5 contract really quick to see if I can find that
 6 because I don't recall exactly.
 7 Q Well, the last sentence on the first
 8 page of Exhibit 12 says, "Attachment B reflects
 9 the cost sheet Midwest Poultry will send to Pace
 10 Dairy each month for the cost change."
 11 A Then that's what it was, once a month.
 12 Q So once a month, Midwest Poultry sent
 13 to you a calculation of their costs, which in
 14 turn dictated what the price would be for the
 15 following month?
 16 A Correct.
 17 Q Okay. Let's take a look at Attachment
 18 A, which is, I believe you said, the general
 19 methodology; correct?
 20 A Yes.
 21 Q So the second sentence in Attachment A
 22 of Exhibit 12 says -- appears that the formula is
 23 total shell egg cost per dozen equals the shell
 24 egg processing cost plus the shell egg production
 25 cost; correct?

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1 A Correct.
 2 Q What is the processing cost per dozen?
 3 A When the egg comes out of the chicken
 4 house and goes across the grading machine, it
 5 becomes a processing cost. And that's the cost
 6 to take that egg, grade it, and put it in a
 7 carton.
 8 Q Okay. So it's post laying --
 9 A Yes.
 10 Q -- as it were?
 11 A Yes.
 12 Q And the cost to get it into the carton,
 13 does that include the cost of -- the
 14 transportation cost?
 15 A I believe that included everything.
 16 Q Okay. And what about the shell egg
 17 production cost?
 18 A That was the cost that -- what it cost
 19 the supplier to produce an egg. Or a dozen eggs.
 20 I'm sorry.
 21 Q And do you know what would be included
 22 in processing costs, what types of expenses?
 23 A I think if you go to the Attachment B
 24 it spells it out pretty clearly, the shell egg
 25 processing cost.

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1 Q Well, let's just --
 2 A That's what Midwest told me the cost
 3 was to produce the egg.
 4 Q Let's stick with Attachment A for just
 5 a minute --
 6 A Sure.
 7 Q -- and see if we can get our way
 8 through that.
 9 So the shell egg production cost, the
 10 next sentence says it's the feed cost plus a
 11 fixed production cost per dozen. Do you see
 12 that?
 13 A Yes.
 14 Q And do you know what was included in
 15 the fixed production cost?
 16 A I can't recall that now.
 17 Q Okay. But the feed cost is then
 18 calculated below that sentence?
 19 A Correct.
 20 Q And it basically calculates -- well,
 21 can you tell me how that was done?
 22 A That was done by Midwest Poultry.
 23 Q Mm-hmm.
 24 A And basically it's what it cost per
 25 dozen to feed the birds.

<p style="text-align: right;">Page 185</p> <p>1 Q And the two feed costs are corn and 2 soybean? 3 A Correct. 4 Q Okay. So then you take the feed cost 5 per dozen which appears to be .2416. Do you see 6 that line? 7 A Feed cost per dozen? 8 Q Yes. If you go maybe three quarters of 9 the way down the page, there's a line that says 10 feed cost per dozen and then there's a 11 calculation and it says it equals .2416. 12 A Yes, I see that. 13 Q And then you add to that the .1866 14 fixed costs to give you a total shell egg 15 production cost of .4282; is that the way that 16 part worked? 17 A Yes. 18 Q Then you add back in the shell egg 19 processing cost of .2449; correct? 20 A Correct. 21 Q And those two numbers give you the 22 total shell egg cost per dozen of .6731 in this 23 case? 24 A Correct. 25 Q And was that the price you then paid</p>	<p style="text-align: right;">Page 187</p> <p>1 A And it's different for each size. 2 Q Right. So do you know how those 3 numbers at the bottom of Attachment B were 4 calculated? How you got to the 1.0172 for jumbo 5 eggs? 6 A After eight years, no, I cannot tell 7 you that. 8 Q But there was presumably something 9 added on to the -- in this case .6732 cost per 10 dozen to reach a price for jumbo eggs? 11 A Yes. 12 Q Was one of the things that was added on 13 certified animal care at .0291 per dozen? 14 A I believe that's what the -- that's 15 what it calls for there. 16 Q So again, the cost plus program with 17 Midwest included a component for the animal 18 welfare program costs; correct? 19 A It included -- it was presented to me 20 as a total package price. This is what it cost 21 me to get eggs. 22 Q Right. And part of what it cost you 23 was .0291 for certified animal care; correct? 24 MR. MURRAY: Objection. 25 Mischaracterizes his testimony.</p>
<p style="text-align: right;">Page 186</p> <p>1 Kroger, or was there something added on to that? 2 MR. MURRAY: Objection to the form of 3 the question. You said paid Kroger. 4 Q I'm sorry. That you paid Midwest? 5 A Right. Yeah, I was kind of confused by 6 that myself. 7 Q Well, yeah, that would be confusing. 8 A Yes, this is the -- this would be the 9 price that would be paid. 10 Q So where's the plus come in? 11 A Well, that's included in. That was 12 included in the shell egg processing cost per 13 dozen, I believe. 14 Q The processing cost included the plus 15 component of the cost plus? 16 A Yes. 17 Q And was this price calculated here, 18 this .6731, the price for all eggs regardless of 19 size? 20 A You know, I can't recall that. I think 21 if you look at Attachment B, you look at the 22 total Kroger cost per dozen, you'll notice that 23 it's different than the total shell egg cost per 24 dozen. 25 Q Right.</p>	<p style="text-align: right;">Page 188</p> <p>1 A That's what it says here. I 2 couldn't -- I couldn't verify that that's the 3 correct amount. It's -- 4 Q Well, you couldn't -- 5 A -- it changed, and so I -- it would 6 change. 7 Q Right. You couldn't verify the feed 8 costs either; correct? 9 A That's correct, because that also 10 varied. 11 Q Or the soybeans cost? 12 A That also varied depending on the 13 market. 14 Q Okay. You couldn't -- you didn't 15 verify any of the numbers in any of your cost 16 plus program contracts with Midwest. Is that 17 what you're saying? 18 A I'm saying that you could find out what 19 the soybean costs were and what the corn costs 20 were, because those were -- you know, they were 21 off a market. 22 Q And did you verify those costs, or did 23 you just take Mr. Krouse's word for it? 24 A I took Mr. Krouse's word for it. 25 Q What is Offsize Differential? Do you</p>

<p style="text-align: right;">Page 189</p> <p>1 know what that refers to?</p> <p>2 A No. But the reason why I'm smiling is</p> <p>3 what it reminds me of is when I get my gas bill.</p> <p>4 There's a charge in there that says "for delivery</p> <p>5 of gas." And you wonder what the heck is that</p> <p>6 for?</p> <p>7 Q Well --</p> <p>8 A That's kind of -- kind of here. I</p> <p>9 can't recall what it's for.</p> <p>10 Q Do you believe at the time you</p> <p>11 understood what it was for?</p> <p>12 MR. MURRAY: Objection to form of the</p> <p>13 question. Calls for speculation.</p> <p>14 A I was much more knowledgeable on egg</p> <p>15 pricing and egg costs when I was involved with</p> <p>16 it. I've let my mind rust for a while --</p> <p>17 Q I understand --</p> <p>18 A -- and so I can't honestly answer that.</p> <p>19 I would hope I did. I would hate to think that I</p> <p>20 would accept pricing and not be able to get some</p> <p>21 idea of where it came from. But I can't tell you</p> <p>22 with any definitive answer today about that.</p> <p>23 Q I'm just trying to understand what</p> <p>24 offsize differential refers to, not whether that</p> <p>25 number is correct, accurate, or what it's based</p>	<p style="text-align: right;">Page 191</p> <p>1 can't say that for sure.</p> <p>2 Q So would that number be calculated on a</p> <p>3 monthly basis depending upon whether Kroger ran a</p> <p>4 special that month?</p> <p>5 A Weekly.</p> <p>6 Q Weekly?</p> <p>7 A The features were weekly. And so it</p> <p>8 would be a weekly allowance.</p> <p>9 Q But you don't recall if the -- if the</p> <p>10 cost plus price was only recalculated on a</p> <p>11 monthly basis, then was the feature allowance</p> <p>12 only calculated on a monthly basis?</p> <p>13 A The feature allowance was a per-dozen</p> <p>14 allowance, so it didn't really matter what the</p> <p>15 cost plus pricing was. If there was a feature</p> <p>16 going on, there would be an allowance of 1.7</p> <p>17 cents.</p> <p>18 Q And it applied to all eggs purchased?</p> <p>19 A It would apply to the feature dozen, I</p> <p>20 believe.</p> <p>21 Q So if it was a feature for Grade A</p> <p>22 large eggs, it applied to all Grade A large eggs?</p> <p>23 A Correct.</p> <p>24 Q But just for a week as opposed to a</p> <p>25 month?</p>
<p style="text-align: right;">Page 190</p> <p>1 on. Do you know what that means?</p> <p>2 A At this point, no. I think you would</p> <p>3 have to -- if you ask Midwest Poultry, they could</p> <p>4 probably tell you.</p> <p>5 Q What about Feature Allowance, do you</p> <p>6 know what that refers to?</p> <p>7 A That would refer to if a Kroger</p> <p>8 division decides to feature eggs, then because of</p> <p>9 the volume increase, Midwest would give an</p> <p>10 allowance because they're selling more eggs.</p> <p>11 Q So if Kroger ran a special of some sort</p> <p>12 for shell eggs that increased the demand, Midwest</p> <p>13 would support that through an allowance?</p> <p>14 A Yes.</p> <p>15 Q And was there some trigger for how much</p> <p>16 increased demand was required before the feature</p> <p>17 allowance kicked in?</p> <p>18 A Not that I recall.</p> <p>19 Q So the feature allowance was</p> <p>20 incorporated into the price of all the eggs you</p> <p>21 purchased from Midwest?</p> <p>22 A I'm not sure. I'm not sure -- I can't</p> <p>23 tell you definitively if it was just the feature</p> <p>24 size or if it was for all eggs. As I recall, I</p> <p>25 think it was just feature size, but I can't -- I</p>	<p style="text-align: right;">Page 192</p> <p>1 A That's correct.</p> <p>2 Q Did Midwest ever contact you to -- or</p> <p>3 ask that you verify that you had in fact run a</p> <p>4 feature when you were requesting the allowance?</p> <p>5 A I don't -- I don't think they did, but</p> <p>6 I can't say for sure. I mean, they would know by</p> <p>7 the increase in volume whether there was a</p> <p>8 feature or not.</p> <p>9 MS. LEVIN: I'm going to mark as</p> <p>10 Exhibit 18 a document bearing Bates</p> <p>11 No. KRGE00 --</p> <p>12 MS. CRABTREE: I think you're on 19.</p> <p>13 MS. LEVIN: You're right. Exhibit 19,</p> <p>14 a document bearing Bates No. KRGE00019358 and</p> <p>15 59.</p> <p>16 MR. NOVAK: I'm sorry, could you repeat</p> <p>17 the Bates number on that?</p> <p>18 MS. LEVIN: KRGE019358 to 59. And I'm</p> <p>19 not so concerned about the second page, just the</p> <p>20 first page.</p> <p>21 (Deposition Exhibit 19 was marked for</p> <p>22 identification.)</p> <p>23 Q Have you had a chance to review Exhibit</p> <p>24 19?</p> <p>25 A The first page, yes.</p>

<p style="text-align: right;">Page 193</p> <p>1 Q And what is Exhibit 19?</p> <p>2 A It's a letter to me from Cliff</p> <p>3 Lillywhite talking about a sliding scale concept</p> <p>4 of pricing.</p> <p>5 Q And the date of Exhibit 19 is</p> <p>6 August 25, 2003?</p> <p>7 A Correct.</p> <p>8 Q Do you recall who Mr. Lillywhite was?</p> <p>9 A I can't remember who -- what company he</p> <p>10 worked for.</p> <p>11 Q Do you --</p> <p>12 A But I recall him.</p> <p>13 Q Okay. Do you recall what the sliding</p> <p>14 scale concept was?</p> <p>15 A In looking at the letter, I understand</p> <p>16 what the sliding scale was. The left-hand</p> <p>17 column, the Mid-West Urner Barry Thursday large</p> <p>18 quote --</p> <p>19 Q Mm-hmm.</p> <p>20 A -- if it was in that particular price</p> <p>21 range, like 40 to 45, he proposed the price would</p> <p>22 be eight cents a dozen discount to the Urner</p> <p>23 Barry. And as the market went up, the discount</p> <p>24 would rise.</p> <p>25 Q So as the Urner Barry Thursday quote</p>	<p style="text-align: right;">Page 195</p> <p>1 change.</p> <p>2 Q From Kroger's perspective it gets an</p> <p>3 increased discount as the Urner Barry market goes</p> <p>4 up?</p> <p>5 A Correct.</p> <p>6 Q What would be the benefit to the</p> <p>7 supplier of that?</p> <p>8 A Not being a supplier --</p> <p>9 MR. MURRAY: Objection. Calls for</p> <p>10 speculation.</p> <p>11 A Yeah. Not being a supplier, I couldn't</p> <p>12 answer that.</p> <p>13 MS. LEVIN: Let's mark as our next</p> <p>14 exhibit a document bearing -- I'm going to put</p> <p>15 that one aside for a minute. I'm sorry, I'm</p> <p>16 trying to find this particular document.</p> <p>17 THE WITNESS: I just want to say I'm</p> <p>18 glad to see I'm not the only one that has trouble</p> <p>19 keeping track of --</p> <p>20 MS. LEVIN: -- finding -- yeah, but</p> <p>21 mine -- a document bearing Bates No. --</p> <p>22 I'd like to mark as Exhibit 20 a</p> <p>23 document bearing Bates No. KRGE00019366.</p> <p>24 (Deposition Exhibit 20 was marked for</p> <p>25 identification.)</p>
<p style="text-align: right;">Page 194</p> <p>1 increased, the discount by whomever</p> <p>2 Mr. Lillywhite worked for to Kroger would</p> <p>3 increase.</p> <p>4 A Correct.</p> <p>5 Q Is that correct?</p> <p>6 Do you know whether a sliding scale</p> <p>7 concept was ever used in any of your contracts</p> <p>8 for the procurement of shell eggs?</p> <p>9 A I cannot remember for sure.</p> <p>10 Q Mr. Lillywhite says that this concept</p> <p>11 seems to have benefits to both parties. Do you</p> <p>12 see that?</p> <p>13 A Yes.</p> <p>14 Q Do you know what the benefit might have</p> <p>15 been to Kroger or to a shell egg supplier of the</p> <p>16 sliding scale concept?</p> <p>17 A Well, as you're procuring eggs, if you</p> <p>18 look at -- if it were a fixed price of eight</p> <p>19 cents a dozen back, then you would pay eight</p> <p>20 cents a dozen back whether the market was 40</p> <p>21 cents or 55 cents. But if you use a sliding</p> <p>22 scale, as the market goes up, your cost would go</p> <p>23 down to a --</p> <p>24 Q So if a Kroger was --</p> <p>25 A -- to kind of accommodate the market</p>	<p style="text-align: right;">Page 196</p> <p>1 A Now I know who Cliff Lillywhite worked</p> <p>2 for.</p> <p>3 Q Okay. We'll get to that after you've</p> <p>4 taken a minute to review Exhibit 20.</p> <p>5 Have you had a chance to review Exhibit</p> <p>6 20?</p> <p>7 A Yes, I have.</p> <p>8 Q And what is Exhibit 20?</p> <p>9 A It is a letter to me from Cliff</p> <p>10 Lillywhite at Oakdell Egg Farms discussing a few</p> <p>11 items.</p> <p>12 Q And Exhibit 20 is dated April 13th,</p> <p>13 2005?</p> <p>14 A Yes.</p> <p>15 Q Okay. And what was Oakdell Egg Farms?</p> <p>16 Was that a supplier to Kroger?</p> <p>17 A Yes. As far as I can recall.</p> <p>18 Q Do you recall what region Oakdell</p> <p>19 supplied eggs to Kroger for? What division?</p> <p>20 A No, I cannot recall.</p> <p>21 Q Do you recall when Oakdell supplied</p> <p>22 eggs to Kroger?</p> <p>23 A In looking at this letter I would</p> <p>24 assume it was in effect in 2005, but I haven't</p> <p>25 got -- I can't really recall exactly when.</p>

<p style="text-align: right;">Page 197</p> <p>1 Q Okay. The second heading in Exhibit 20 2 references sliding scale. Do you have a 3 recollection of what sliding scale -- scale is? 4 A That was what we just referred to -- 5 Q Okay. 6 A -- in Document 19. 7 Q Gotcha. Later on in that very same 8 paragraph it says, "As in the past, we will 9 continue charging a flat price for each period, 10 based on the prior Kroger period's scale price." 11 Do you know what that means? 12 A I can't recall anymore. 13 I think Oakdell was a supplier, but not 14 a primary supplier. 15 Q Okay. 16 MS. LEVIN: Let's mark as Exhibit 21 a 17 document bearing Bates No. KRGE00019171. 18 (Deposition Exhibit 21 was marked for 19 identification.) 20 Q And I will only be questioning you 21 about the first page. 22 What is Exhibit -- have you a chance -- 23 have you had a chance to review Exhibit 21? 24 A I've read the first page. 25 Q And what is the first page of Exhibit</p>	<p style="text-align: right;">Page 199</p> <p>1 failure and you've got a contract out for some 2 corn and there's not enough corn, there's -- you 3 can sell it for a bigger price. But I'm not 4 really sure about puts and takes. You'd really 5 have to ask Mr. Krouse about that. 6 Q Okay. You don't know how locking in or 7 purchasing puts with particular strike prices 8 would protect Kroger in the event of a decline in 9 the corn market? 10 A I don't know exactly, no. It would be, 11 you know, buy long and sell short, basically. 12 Q Did you try to verify whether 13 Mr. Krouse would have in fact purchased corn 14 puts, for example? 15 A Mr. Krouse was very good about that. 16 He would invite me to meet with him and the 17 person who sits on the -- purchased the -- the 18 guy that bought the corn, I can't think of what 19 his title would be, but it's kind of like a stock 20 broker, only it's a commodities broker. 21 Q Right. 22 A And we would have periodic meetings 23 where he would explain to Mr. Krouse and I what 24 the corn pricing was going to do and where it was 25 going to go and what --</p>
<p style="text-align: right;">Page 198</p> <p>1 21? 2 A It's a letter to me from Robert Krouse 3 at Midwest Poultry Services regarding our 4 agreement on November 11th, 2004, to lock in corn 5 and soybean prices. 6 Q Can you explain to me exactly what that 7 means? 8 A One of the variables in the cost plus 9 pricing that we had with Midwest Poultry was the 10 cost of soybeans and corn, which is one of the 11 larger costs in the production of shell eggs. 12 And by locking into a price we were able to 13 hold -- that would hold the price for a period of 14 time. 15 Q So the price that was being locked in 16 to was for corn and soybean; correct? 17 A Correct. 18 Q What are puts? It makes reference to 19 purchasing corn puts. 20 A These are market-driven things, puts 21 and -- what's the other one? -- strike price? 22 Q Mm-hmm. 23 A I'm not sure now. At the time it was 24 explained to me, but I have forgotten. It just 25 has something to do with if there's a crop</p>	<p style="text-align: right;">Page 200</p> <p>1 Q And then -- 2 A -- was going on. 3 Q And then Mr. Krouse decided whether to 4 lock in on that particular price for a period of 5 time? 6 A Yes. 7 Q And that's the purpose of Exhibit 21, 8 to communicate to you that he has locked in on 9 that price for a particular period? 10 A Correct. 11 Q And the idea here is to maintain some 12 sort of steadiness in your cost plus contract? 13 A That's correct. 14 MS. LEVIN: Let's mark as Exhibit 22 a 15 document bearing Bates No. KRGE00019004 through 16 07. 17 (Deposition Exhibit 22 was marked for 18 identification.) 19 Q And while she's putting the sticker on 20 let me just ask you, Mr. Stull, do you have any 21 doubt that you received Exhibit 21 on or about 22 November 18, 2004? 23 A No. 24 Q Again, I'll just be questioning you 25 about the first page of Exhibit 22.</p>

<p style="text-align: right;">Page 201</p> <p>1 Have you had a chance to review 2 Defendant's Exhibit 22? 3 A Yes, I have. 4 Q Does Exhibit 22 appear to be similar in 5 nature to Exhibit 21 in that it is providing you 6 with information on locking in to corn and 7 soybean meal components -- 8 A Yes. 9 Q -- of the shell egg program? 10 What was the time period covered by 11 Exhibit 21, the last one that we looked at? 12 A May 22nd, 2005, through January 28th, 13 2006. 14 Q And Exhibit 22, what time period does 15 that cover? 16 A January 29, 2006, ending January 27, 17 2007. 18 Q So if you have the cost component, the 19 corn and soybean meal cost component locked in 20 for an entire period, one-year period, as 21 reflected in Exhibit 22, did that mean that 22 your -- your price to -- that you paid to Kroger 23 remained flat for that entire period of time? 24 MR. MURRAY: Object to the form of the 25 question.</p>	<p style="text-align: right;">Page 203</p> <p>1 A Yes. 2 MS. LEVIN: Let's mark as Exhibit -- 3 Q Well, do you have any doubt that you 4 received Exhibit 22 on or about September 12th, 5 2005? 6 A No. 7 MS. LEVIN: Let's mark as Exhibit 23 a 8 document bearing Bates No. KRGE000 -- 00019008 9 to 09. 10 (Deposition Exhibit 23 was marked for 11 identification.) 12 Q We don't need to study the second page. 13 Have you had a chance to review Exhibit 14 23? 15 A Yes, I have. 16 Q What is Exhibit 23? 17 A It's a letter to me from Robert Krouse 18 talking about our grain hedging status and the 19 corn puts. 20 Q Okay. And Exhibit 23 is dated 21 September 23, 2005? 22 A My birthday. Yes. 23 Q How nice. 24 Do you have any doubt that you received 25 Exhibit 23 on or about September 23, 2005?</p>
<p style="text-align: right;">Page 202</p> <p>1 A I think just as a point of -- if you 2 look at the back page -- 3 Q Yes. 4 A -- it shows you. You can see the 5 Kroger pricing straight across it stayed -- for 6 that period of time it stayed pretty constant. 7 Q So page 3 of Exhibit 22 is a graph of 8 what Kroger's shell egg prices were expected to 9 be -- 10 A Correct. 11 Q -- from February '06 to January of '07? 12 A Correct. 13 Q And it was expected to -- I'm having a 14 hard time figuring out where the -- which of 15 these two axes is over time. 16 A I -- I believe those prices are per 17 month prices. 18 Q Beginning when? What would be the 19 February '06 price? 20 A In looking at the graph, I would say it 21 would be the -- you'd go to the left-hand side. 22 Q .7243? 23 A Yes. 24 Q And then each new entry to the right is 25 a subsequent month?</p>	<p style="text-align: right;">Page 204</p> <p>1 A No. 2 Q What is a grain hedging status? Or 3 what is grain hedging? 4 A That's that mysterious puts and cuts 5 thing. You would have to be a commodities trader 6 to understand -- be able to explain it, and I 7 can't. 8 Q Right. Do you understand the second 9 paragraph of Exhibit 23? 10 A Yes. 11 Q What does that refer to? 12 A The puts -- net profit from the sale of 13 the corn puts was \$321,000, and that -- then that 14 went into the Kroger feature allowance cost. 15 Q So whatever a put is, Exhibit 23 16 reflects that the put was sold? 17 A Yes. 18 Q There was a profit? 19 A Yes. 20 Q And did that profit go to Kroger? Is 21 that correct? 22 A It went into -- yes. It went into the 23 Kroger feature allowance. 24 Q What is the feature allowance? 25 A When Kroger would feature eggs, we</p>

<p style="text-align: right;">Page 205</p> <p>1 would try to find ways to get the price down. 2 And when you have a fixed price, like on a cost 3 plus price, there's no negotiating that price 4 down, except if you have something like this that 5 could go into offset cost. 6 Q Well, if you look back on Exhibit 22 on 7 the second page, which is one of several Kroger 8 cost plus shell egg program documents, we talked 9 about this in conjunction with a different 10 exhibit, but there is a reference to feature 11 allowance. 12 A Correct. This is -- this would be in 13 addition to feature allowance. 14 Q So this is in addition to whatever 15 feature allowance was already baked into the 16 contract, or into the cost plus? 17 A Correct. 18 Q And how did you then draw on the 19 feature allowance that came as a result of the 20 corn puts profit? 21 A It would be based on dozens sold. The 22 more dozens that Kroger sold, they would dip into 23 this and use it. 24 Q Okay. And was there again a trigger 25 for a level above which you had to sell before</p>	<p style="text-align: right;">Page 207</p> <p>1 (Deposition Exhibit 24 was marked for 2 identification.) 3 Q Have you had a chance to review Exhibit 4 24? 5 A Yes, I have. 6 Q And what is Exhibit 24? 7 A It's a letter to me from Robert Krouse 8 of Midwest Poultry regarding some feature pricing 9 on eggs. 10 Q And what -- there's a reference in the 11 first sentence -- well, what's the date of 12 Exhibit 24? 13 A Pardon me? 14 Q What's the date of Exhibit 24? 15 A April 20th, 2005. 16 Q And do you have any doubt about whether 17 you received Exhibit 24 on or about April 20th, 18 2005? 19 A No, I do not. 20 Q There's a reference in the first 21 sentence to "Four More Value pricing for all 22 medium eggs." 23 THE REPORTER: I'm sorry. Excuse me. 24 To -- 25 MS. LEVIN: For More Value pricing --</p>
<p style="text-align: right;">Page 206</p> <p>1 you could draw on the feature allowance? 2 A Not that I recall. 3 Q I'm struggling with what triggers being 4 able to draw on the feature allowance. 5 MR. MURRAY: Is that a question? 6 MS. LEVIN: Yes, it is. 7 MR. MURRAY: Objection to the form of 8 the question. 9 A It would be sales, I would think, you 10 know, based off retroactively. 11 Q Mm-hmm. Do you know how Kroger went 12 about -- you know, from a flow of money, how 13 Kroger went about obtaining the feature allowance 14 funds? 15 A I honestly can't answer that. I can't 16 recall it. 17 Q Do you know whether you'd get an 18 invoice that would reflect a discount for a 19 feature allowance or is that much less you had to 20 pay Midwest on an invoice? 21 A I can't recall. I can't recall if 22 that's how it was done or not. 23 Q Okay. 24 MS. LEVIN: Let's mark as Exhibit 24 a 25 document bearing Bates No. MPS-00048631.</p>	<p style="text-align: right;">Page 208</p> <p>1 MR. MURRAY: It's all caps at the 2 beginning of each word. 3 MS. LEVIN: -- for all medium eggs. 4 Q Do you see that? 5 A I see that. 6 Q Do you have a recollection as to what 7 For More Value pricing refers to? 8 A No, I do not. 9 MS. LEVIN: I'd like to mark as Exhibit 10 25 a document bearing Bates No. KRGE00019303. 11 (Deposition Exhibit 25 was marked for 12 identification.) 13 Q And Mr. Stull, I might only have one 14 question for you, so before you spend too much 15 time studying, my question is, do you recognize 16 the handwriting on Exhibit 25? 17 A No, I do not. 18 Q Not -- not your handwriting under any 19 circumstances? 20 A Not mine at all. 21 Q I think that's the only question I have 22 on that document. 23 MS. LEVIN: Let's mark as Exhibit 26 a 24 document bearing Bates No. KRGE00018723. 25 (Deposition Exhibit 26 was marked for</p>

<p style="text-align: right;">Page 209</p> <p>1 identification.)</p> <p>2 Q And my only -- my only question is</p> <p>3 whether this appears to be a document that was</p> <p>4 prepared by you?</p> <p>5 A No. It's not prepared by me.</p> <p>6 MS. LEVIN: And I would like to mark as</p> <p>7 Exhibit 27 a document bearing Bates No.</p> <p>8 MPS-00123649.</p> <p>9 You're not going to like your picture</p> <p>10 in this one. It's very unflattering.</p> <p>11 (Deposition Exhibit 27 was marked for</p> <p>12 identification.)</p> <p>13 MR. MURRAY: I think you look rather</p> <p>14 dashing.</p> <p>15 MS. OSBORN: Looks like an Andy Warhol</p> <p>16 pop art piece.</p> <p>17 THE WITNESS: Different glasses.</p> <p>18 That's about all I can tell you.</p> <p>19 MS. LEVIN: I believe it's just the</p> <p>20 first page. The second page appears to be</p> <p>21 pertaining to somebody else.</p> <p>22 THE WITNESS: Right.</p> <p>23 Q Have you had a chance to review Exhibit</p> <p>24 27?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 211</p> <p>1 with it.</p> <p>2 Q But apparently the International Egg</p> <p>3 Commission put out a publication about their</p> <p>4 spring meeting in 2004?</p> <p>5 A Yes.</p> <p>6 Q I'd like to direct your attention --</p> <p>7 and you've had a chance to review Exhibit 27.</p> <p>8 Does it appear to be an accurate rendition of the</p> <p>9 comments that you made to the interviewer?</p> <p>10 MR. MURRAY: Objection to the form of</p> <p>11 the question.</p> <p>12 A I can't recall if it is or not. I</p> <p>13 mean, it's -- that was a while back.</p> <p>14 Q Right.</p> <p>15 A Ten years ago.</p> <p>16 Q Towards the bottom of the second column</p> <p>17 it states, "They now ensured that their supplies</p> <p>18 were compliant with the United Egg Producers'</p> <p>19 (UEP) Guidelines on keeping hens." Do you see</p> <p>20 that?</p> <p>21 A Umm --</p> <p>22 Q It's almost all the way down,</p> <p>23 next-to-last paragraph.</p> <p>24 A I see that, yes.</p> <p>25 Q Who was the "they"?</p>
<p style="text-align: right;">Page 210</p> <p>1 Q And what is Exhibit 27?</p> <p>2 A It's a press release, or an article</p> <p>3 from the -- the International Egg Commission.</p> <p>4 Q Do you know what International Egg</p> <p>5 Commission is?</p> <p>6 A It's a group of international egg</p> <p>7 people, I would assume.</p> <p>8 Q Well, does the first page of Exhibit 27</p> <p>9 reflect an interview that you gave to the</p> <p>10 International Egg Commission in the spring of</p> <p>11 2004?</p> <p>12 A Yes.</p> <p>13 Q What was the occasion for this</p> <p>14 interview?</p> <p>15 A I'm not -- I was invited to a meeting,</p> <p>16 and I'm not really sure going back what -- what</p> <p>17 was the occasion.</p> <p>18 Q But there was some sort of publication</p> <p>19 that arose out of that meeting; is that correct?</p> <p>20 A Yes. This.</p> <p>21 Q Right. And does the International Egg</p> <p>22 Commission periodically put out a publication of</p> <p>23 some sort?</p> <p>24 A I can't answer that. I don't know.</p> <p>25 This is the first and only time I was involved</p>	<p style="text-align: right;">Page 212</p> <p>1 A You know, I'm not sure. You notice</p> <p>2 where I spoke they put quotation marks around it,</p> <p>3 and they quoted what I said. That's not in</p> <p>4 quotation marks at all.</p> <p>5 Q Well, I understand it's not --</p> <p>6 A I'm sure that, you know, there's</p> <p>7 some -- I don't know if I said it or if that's</p> <p>8 just assumptions made by whoever wrote this</p> <p>9 article.</p> <p>10 Q But my --</p> <p>11 A But if it's not quoted, it's not</p> <p>12 anything I can take claim of.</p> <p>13 Q My question is who the "they" appears</p> <p>14 to refer to?</p> <p>15 A I think my guess would be -- and this</p> <p>16 would be a guess; I'm not qualified to say who</p> <p>17 they're referring to -- would be retailers.</p> <p>18 Q Such as Kroger?</p> <p>19 A All retailers.</p> <p>20 Q Well, would you have been qualified to</p> <p>21 speak on what all retailers were doing?</p> <p>22 A No. That's why that's not quoted</p> <p>23 there, because I didn't say it.</p> <p>24 Q As of spring of 2004 was Kroger in fact</p> <p>25 ensuring that their egg suppliers were compliant</p>

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1 with the United Egg Producers's guidelines on
 2 keeping hens?
 3 MR. MURRAY: Object to the form of the
 4 question.
 5 A In talking over today, we would have to
 6 refer to the -- I don't know about the time
 7 frame. I will stand by what's in all the
 8 documents we've put in that have been agreed to.
 9 But I don't -- I don't know if that -- if we were
 10 in total compliance then or not, I don't know
 11 what the status was. I can't recall it.
 12 Q You haven't seen any documents today
 13 that reflect -- that don't include a requirement
 14 that an egg supplier be compliant with the United
 15 Egg Producers' guidelines on keeping hens?
 16 MR. MURRAY: Object to the form of the
 17 question.
 18 A In what you've shown me? I believe
 19 that it was in the documents that we looked at
 20 today.
 21 Q Okay.
 22 MS. LEVIN: I have nothing further.
 23 MS. CRABTREE: Nothing from me, thank
 24 you.
 25 MS. OSBORN: And nothing from me.

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1 MR. MURRAY: Okay. I got a couple
 2 quick questions. Can you pull out Exhibit 4
 3 again, please?
 4 MR. NOVAK: This is Paul Novak on the
 5 phone. I don't know where in the sequence of
 6 questioning you'd like me to go.
 7 MS. LEVIN: Kroger's counsel was about
 8 to go.
 9 MR. MURRAY: Who do you represent,
 10 Mr. Novak?
 11 MR. NOVAK: Indirect purchaser
 12 plaintiffs.
 13 MR. MURRAY: All right. Why don't you
 14 go, and then I'll go at the end. I'm sorry, I
 15 forgot that we still had someone on the phone
 16 you've been so well behaved. So quiet.
 17 MR. NOVAK: I'm not surprised at all
 18 that folks may have forgotten that I was hanging
 19 out on the phone.
 20 MR. MURRAY: Go ahead and ask your
 21 questions.
 22 MS. LEVIN: Ask away.
 23 MR. NOVAK: Okay. I'm going to take it
 24 off speaker so that hopefully I'm easier to hear.
 25 MR. MURRAY: Thank you.

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1 FURTHER DIRECT EXAMINATION,
 2 QUESTIONS BY PAUL NOVAK:
 3 Q Mr. Stull, I just wanted to be clear.
 4 You had testified I think that you had supply
 5 agreements at various times with Cal-Maine, Rose
 6 Acre, Norco Ranch, National Food, Hillandale,
 7 NuCal and Midwest, perhaps among others; is that
 8 correct?
 9 A Yes.
 10 Q Okay. And a lot of the questioning
 11 today has been about whether the pricing under
 12 those contracts is based at least in part upon a
 13 posted Urner Barry price. For all of the
 14 different producers that I just referenced, with
 15 the exception of Midwest, was an Urner Barry
 16 price part of how the price for those suppliers'
 17 eggs were calculated?
 18 A Yes, I believe so.
 19 Q Okay. And I think you testified that
 20 when you discussed the concept of cost plus
 21 pricing with other producers in the industry,
 22 there was resistance to that; is that correct?
 23 MS. LEVIN: I'll object to the form.
 24 A You know, I can -- I can't say with
 25 accuracy if it was with all of them, but with

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1 some of them, yes.
 2 Q All right.
 3 MR. NOVAK: That's all I have.
 4 MR. MURRAY: Okay. I just have a
 5 couple questions.
 6 CROSS-EXAMINATION,
 7 QUESTIONS BY KEVIN J. MURRAY:
 8 Q Looking at Exhibit 4 --
 9 A Yes.
 10 Q -- other than by looking at the -- this
 11 letter and the title of Mr. Gene Gregory, would
 12 you know who Mr. Gregory is or was?
 13 A I would not recognize him if he walked
 14 in the door.
 15 Q Okay. Looking at the language in this
 16 letter that's been marked as Exhibit 4, can you
 17 tell if this is something you drafted or if it
 18 was drafted by somebody else?
 19 MS. LEVIN: Object to the form. Asked
 20 and answered several times.
 21 Q You can answer. I'll repeat the
 22 question if you want me to.
 23 A Yes, please.
 24 Q Looking at the language that's used in
 25 this letter, can you tell if that's something

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1 that you would have drafted or if it was drafted
 2 by someone else?
 3 MS. LEVIN: And I'll object to form.
 4 Asked and answered, and calls for speculation as
 5 phrased.
 6 A It doesn't appear that it's my style of
 7 writing.
 8 Q There's a reference in the letter to
 9 the Animal Care Certified program. Do you see
 10 that?
 11 A Yes, I do.
 12 Q Okay. Did any of the egg producers who
 13 bid on eggs at Kroger ever tell you that the
 14 FC -- FTC determined that the term animal care
 15 was misleading?
 16 A I can't recall that.
 17 Q Okay. Did any of the egg producers who
 18 submitted bids to Kroger ever tell you that the
 19 UEP's goal in pursuing the animal welfare
 20 guidelines and certification program was to
 21 reduce the supply and raise the price of eggs?
 22 A No.
 23 Q Okay. Did any of the egg suppliers who
 24 submitted bids to Kroger ever tell you about
 25 exporting eggs at below cost?

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1 A No.
 2 Q Did any of the egg suppliers who
 3 submitted bids to Kroger ever tell you that the
 4 UEP members were discouraged from building new
 5 henhouses --
 6 A No.
 7 Q -- once these guidelines were passed?
 8 A No.
 9 MS. OSBORN: Objection. Assumes facts
 10 not in evidence.
 11 MR. MURRAY: Okay.
 12 Q Did any of the egg suppliers who
 13 submitted bids to Kroger ever tell you that the
 14 UEP animal welfare program was a hidden agenda
 15 for price fixing?
 16 A No.
 17 MS. OSBORN: Same objection.
 18 Q Would it be fair to say that Kroger had
 19 no direct input in the drafting of the UEP
 20 guidelines?
 21 MS. LEVIN: Object to the form.
 22 A Would you repeat the question, please?
 23 Q Would it be fair to say that Kroger had
 24 no direct input into the drafting of the UEP
 25 guidelines?

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1 MS. LEVIN: Object to the form.
 2 A Yes.
 3 Q Kroger was not a member of the UEP; was
 4 it?
 5 A No.
 6 Q Okay.
 7 MR. MURRAY: I have no further
 8 questions.
 9 MS. LEVIN: Just a slight redirect.
 10 REDIRECT EXAMINATION,
 11 QUESTIONS BY CHRISTINE C. LEVIN:
 12 Q Mr. Stull, what's the basis for your
 13 testimony that Kroger had no input into the
 14 drafting of the UEP guidelines?
 15 A I'm not sure what you're asking me.
 16 Q What's the basis for your testimony
 17 that you just gave that Kroger had no input into
 18 the drafting of the animal welfare guidelines?
 19 A To my knowledge, they didn't.
 20 Q But you don't know one way or the other
 21 whether Kroger had any input into the drafting of
 22 the animal welfare guidelines; do you?
 23 A I know I had no input into it.
 24 Q You had no input, but it's quite
 25 possible that Ms. Marmer, for instance, had input

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1 into the drafting of the animal welfare
 2 guidelines?
 3 MR. MURRAY: Object to the form of the
 4 question. Calls for speculation.
 5 A I don't know how to say this other than
 6 to say I can't speak for other people within the
 7 Kroger organization.
 8 Q I understand.
 9 A Whether she did or not, I have no idea.
 10 Q But when asked whether you -- Kroger
 11 had any input into the drafting of the animal
 12 welfare guidelines, your testimony was no. That
 13 was not correct; was it?
 14 A I thought we were talking about me
 15 personally.
 16 Q The question was not you personally, it
 17 was Kroger. So that testimony was incorrect?
 18 MR. MURRAY: Object to the form of the
 19 question.
 20 A I personally had no input into the UEP
 21 guidelines.
 22 Q And you don't know one way or the other
 23 whether Kroger did?
 24 A That's correct. I don't know.
 25 MS. LEVIN: Thank you.

1 MR. MURRAY: I think you're done.
 2 THE VIDEOGRAPHER: This concludes the
 3 deposition of Gary Stull. The time is 4:03 --
 4 almost -- p.m., and we are off the record.
 5 MR. MURRAY: We're going to designate
 6 this at least for the time being highly
 7 confidential, and we don't waive the reading and
 8 signing.
 9 AND FURTHER THE DEPONENT SAITH NOT.
 10
 11
 12
 13 _____
 14 GARY A. STULL
 15
 16 Subscribed and sworn to and before me
 17 this _____ day of _____, 20____.
 18
 19
 20 _____
 21 Notary Public
 22
 23
 24
 25

1 STATE OF INDIANA)
 2) SS:
 3 COUNTY OF MARION)
 4 I, Tara Gandel Hudson, RPR, CRR, a Notary
 5 Public in and for the County of Marion, State of
 6 Indiana at large, do hereby certify that the
 7 deponent herein, GARY STULL, was by me first duly
 8 sworn to tell the truth, the whole truth, and
 9 nothing but the truth in the aforementioned matter;
 10 That the foregoing deposition was taken on
 11 behalf of the Defendants at the offices of FAEGRE
 12 BAKER DANIELS, 300 North Meridian Street, Suite
 13 2700, Indianapolis, Marion County, Indiana, on the
 14 1st day of April, 2014, commencing at the hour of
 15 9:32 a.m., pursuant to the Federal Rules of Civil
 16 Procedure;
 17 That said deposition was taken down in
 18 stenographic notes and translated into an English
 19 transcript under my direction, and that said
 20 transcript is a true record of the testimony given
 21 by the said deponent; and that the signature of
 22 said deponent to his deposition was requested;
 23 That the parties were represented by their
 24 counsel as aforementioned.
 25 I do further certify that I am a disinterested

1 person in this cause of action; that I am not a
 2 relative or attorney of either party, or otherwise
 3 interested in the event of this action, and am not
 4 in the employ of the attorneys for either party.
 5 IN WITNESS WHEREOF, I have hereunto set my
 6 hand and affixed my notarial seal this _____ day
 7 of _____, 2014.
 8
 9 _____
 10 NOTARY PUBLIC
 11
 12 My Commission Expires:
 13 April 9, 2016
 14
 15 County of Residence:
 16 Marion
 17
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 24
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